SOCIAL ACTION THROUGH COURTS

Landmark Judgements in Public Interest Litigation

M.J. Antony

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M.J. Antony

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CONTENTS

Index	*v*
Subject Index	*viii*
Chapter-I	1
Chapter-II	6
Chapter-III	11
Cases	16

INDEX

(The numbers in brackets refer to the serial numbers of cases cited in the text)

All-India Democratic Women's Association vs Union of India (63)
Anil Yadav vs State of Bihar (9).
Ashok Kumar Mittal vs Maruti Udyog Ltd. (47).
Assam Rifles Multipurpose Cooperative Society vs Union of India (73).
Balwant Singh vs Mahmood (28).
Bandhua Mukti Morcha vs Union of India (34).
Banwasi Sewa Ashram vs N.T.P.C. (87).
Bhopal Gas Peedit Mahila Udyog Sanghatan vs Union of India (64).
Bimal Prasad Das vs Bijayananda Patnaik (99).
Biswajit Sinha vs Dibrugarh University (97).
Chandru K. vs State of Tamil Nadu (41).
Chaitanya Kumar vs State of Karnataka (45).
Chaitanya Kalbag vs State of U.P. (65).
Chhatriya Pardushan Mukti Sangarsh Samiti vs State of U.P. (81).
Chengappa vs State of Karnataka (94).
Chopra H.K. vs PGI, Chandigarh (98).
Delavai R.R. vs Indian Overseas Bank (96).
Dubey P.N. vs Union of India (102).
Free Legal Aid Committee vs State of Bihar (19).
Gupta S.P. vs Union of India (14, 15).
Gandhi R. vs Union of India (101).
Gaurav Jain vs Union of India (77).
Hindustan Andolan vs State of Punjab (31).
Hussainara Khatoon vs State of Bihar (1, 2, 3, 4, 5).
Indra Sawhney vs Union of India (91).
Jagajeevan Ram P. vs Union of India (100).
Janata Dal vs H.S. Chowdhary (89).
Joint Women's Progreamme vs State of Rajasthan (51).
Kadra Pahadia vs State of Bihar (26).
Kamaladevi Chattopadhyay vs State of Punjab (38).
Kapoor B.R. vs Union of India (68).
Khatri vs State of Bihar (10, 11, 12).
Kishen Patnayak vs Union of India (74).
Kishore Singh vs State of Rajasthan (13).

Krishna Bhat vs Union of India (79).
Krishna Swami vs Union of India (88).
Labourers of Salal Hydro Project vs State of J & K (27).
Madhu Mehta vs Union of India (71).
Mann S.S. vs Union of India (90).
M.C. Mehta vs Union of India (48).
M.C. Mehta vs Union of India (56).
M.C. Mehta vs Union of India (61).
M.C. Mehta vs State of Tamil Nadu (83).
M.C. Mehta vs Union of India (84).
Misra R.K. vs State of Bihar (33).
Mittal A.S. vs State of U.P. (67).
Munna vs State of U.P. (16).
Nallathampy Thera vs Union of India (37).
Narayan R.C. vs State of Bihar (72).
Nawal Thakur, In re (36).
Nayak R.S. vs A.R. Antulay (32).
Neeraja Chaudhary vs State of M.P. (35).
Nilabati Behera vs. State of Orissa (103).
Odyssey Communications vs Lokvidyan Sanghatana (57).
Olga Tellis vs State of Maharashtra (40).
Pandey L.K. vs Union of India (44).
Parameshwaran T. vs District Collector (93).
Paramanand Katara vs Union of India (69).
Poola Bhaskara Vijayakumar vs Andhra Pradesh (92).
PUDR vs Union of India (20).
PUDR vs State of Bihar (50).
PUDR vs Police Commissioner (70).
Rakesh Kaushik vs Supt. of Central Jail, Delhi (8).
Ramesh Chotalal Dalal vs Union of India (59).
Ramsharan Autyanuprasi vs Union of India (75).
Rathinam vs. State of Gujarat (104).
Rudal Sah vs State of Bihar (29).
Rural Litigation and Entitlement Kendra vs State of U.P. (39).
Sachidanand Pandey vs State of West Bengal (53).
Sadhanantham vs Arunachalam (6).
Saheli vs Commissioner of Police (76).
Sanjay Suri vs Delhi Administration (60).
Sanjit Roy vs State of Rajasthan (22).
Sant Bir vs State of Bihar (18).

Sebastian Hongray vs Union of India (30).
Sheela Barse vs State of Maharashtra (23).
Sheela Barse vs Children's Aid Society (52).
Sheela Barse vs State of Maharashtra (55).
Sheela Barse vs Union of India (62).
Shivrao Wagle vs Union of India (58).
Sodhi R.S. vs Union of India (21).
Soosai vs Union of India (43).
State of H.P. vs A parent (42).
State of H.P. vs Umed Ram (46).
Subhash Kumar vs State of Bihar (82).
Subhash Sharma vs Union of India (85).
Sudipt Mazumdar vs State of M.P. (24).
Sunil Batra vs Delhi Administration (7).
Sunil Gupta vs State of M.P. (80).
Supreme Court Legal Aid Committee vs Union of India (66).
Tehri Bandh Virodhi Sangarsh Samiti vs State of U.P. (86).
Upendra Baxi vs State of U.P. (25).
Veena Sethi vs State of Bihar (17).
Vincent Panikulangara vs Union of India (54).
Vishal Jeet vs Union of India (78).
Wadhwa D.C. vs State of Bihar (49).
Youth for Unity vs State of Maharashtra (95).

SUBJECT INDEX

(The numbers in brackets refer to the serial numbers of cases cited in the text)

Accidents, road (69).
Adoption (44).
Agitation (21).
Anonymous complaint (42).
Bail (1, 2, 5, 19).
Bonded labour (34, 35).
Caste, backward (43).
Child labour (83).
Chidlren of prostitutes (77, 78).
Children in custody (2, 16, 52, 60, 66).
Commissions (34).
Compensation (29, 30, 50, 64, 70, 76, 80, 101, 103, 104).
Consumer (47).
Conversion (43).
Contractors, labour (20).
Corruption (32, 99, 102).
Court, arrears (85).
Criminal appeals (6).
Custody (2, 90, 103).
Death sentence (71, 90).
Documents, disclosure of (15).
Dowry deaths (51).
Education (97).
Environment (39, 86).
Eviction (87).
Freedom of expression (57, 59, 93, 100).
Harijans (46).
Hospital (68, 72).
Housing (94).
Injuries (28).
Jail conditions (5, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 26, 55, 92).
Labour (28).
Law and order (31, 38).
Legal Aid (4, 23).
Locus standi (14, 61, 88, 89, 90, 92, 96, 97).
Medicines (54).

Medical negligence (67).
Medical care (69).
Military (73).
Ordinances (49).
Pavement dwellers (40, 41).
PIL (17, 20, 24, 34, 36, 37, 39, 42, 45, 46, 53, 54, 55, 62, 73, 75, 81, 82, 88, 89, 90, 94, 95, 96, 98).
Police (65, 70, 76, 78, 80).
Pollution (48, 56, 58, 61, 81, 82, 84).
Prisons, prisoners' rights; see Jail conditions
Prohibition (79).
Prostitutes (25, 77, 78).
Ragging in colleges (42).
Railways (37).
Rallies (21).
Rape (104)
Reservation in jobs, 'Mandal' case (91).
Roads (46).
Sati (63).
Slum dwellers (40, 41, 95).
Standing (14).
Starvation (74).
Television programme (57, 59).
Trial (1, 3, 4).
Wages for prisoners (92).
Wages, minimum (20, 22, 33, 83).
Women in custody (2, 3, 23, 52, 95).
Women, sati (63).

2043

the community which would deter him from fleeing, the following factors should be taken into account:

1. the length of his residence in the community,
2. his employment status, history and his financial condition,
3. his family ties and relationships,
4. his reputation, character and monetary condition,
5. previous criminal record,
6. the identity of responsible members of the community who would vouch for his reliability,
7. nature of offences and probability of conviction, and
8. any other factors indicating his ties to the community.

The courts, while releasing the accused on personal bond, must not fix the amount based on the nature of the charge. The amount should relate to the financial circumstances of the accused, and the probability of his absconding. It should not be fixed mechanically according to a rate related to the nature of the charge.

When the accused is released on personal bond, it would be very harsh if he is required to prove to the court he is solvent. It could cause him great embarrassment and would often result in denial of bail. Therefore, this condition should not be insisted upon.

These rules must be applied by not only the courts, but also by the police, while granting bail.

In the present case, the Supreme Court ordered the release of all prisoners named in the news report immediately on personal bond. There should be no monetary obligation in their case, said the court, as all of them have been in jail without trial for several years.

2. GOVERNMENT SPURRED INTO ACTION

Hussainara Khatoon (II) vs. State of Bihar

This is the continuation of the earlier case. When the case was called two weeks after the last order, Bihar government counsel appeared for the first time and submitted a statement in which the government declared its policy regarding the undertrials. The government was compelled to take action due to the tough stand taken by the court and the wide publicity given in the press to this case.

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2. Judges: P.N. Bhagwati and R.S. Pathak.
(1980)1 SCC 91.

Facts: The Bihar government stated that it had classified the undertrials into five categories. It decided to withdraw, for instance, all "ordinary" cases under the Forest Act, Excise Act, Police Act and the Motor Vehicles Act in which the accused had been in jail for six months or more. The district officers were asked to review all cases of the undertrials.

Ruling: The court expressed happiness at the belated action of the Bihar government and asked other states to follow suit.

The only other significant direction given in this order was with regard to women and children who were released on personal bond. They had nowhere to go. Therefore, the court directed the jail authorities to contact the state welfare department as soon as women and children were released and the department was directed to take care of them till the case was disposed of.

This order did not lay down any general principles to be followed by the authorities. Therefore, it is not as important as *Hussainara Khatoon I* or some other judgements in this case which were to follow soon.

3. WOMEN IN CUSTODY RELEASED

Hussainara Khatoon (III) vs. State of Bihar

This is again the continuation of the Bihar undertrial cases narrated in the last two instances. The facts are the same, and the ruling refers specifically to the situation revealed in the press and in the State government's statement. The court emphasised the right to speedy trial explained in Hussainara Khatoon-I judgement and asked the state authorities to complete the investigations and trial within a time-bound programme. They were asked to follow the procedures laid down in Sections 167(2) and 167(5) of the Criminal Procedure Code. The court specifically passed seven directions to make sure that these provisions are followed in letter and spirit. Though these orders were passed in the particular context of the Bihar situation, they indicate the extent to which a sympathetic and activist court can go. It can go through the details of the individual cases and pass necessary orders. Apart from this, the directions passed by the court in this order has no general application.

Ruling: As stated, the orders apply mainly to the then Bihar situation. But one outstanding feature of this order is its ruling on women who

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3. Judges: P.N. Bhagwati and A.P. Sen.
(1980)1 SCC 93.

have been taken on "protective custody." There were quite a few women prisoners who were in jail without even being accused of any offence. They were in fact victims and were required as witnesses in trials which never started. The judgement said: "The expression 'protective custody' is a euphemism calculated to disguise what is really and in truth nothing but imprisonment. It is an expression intended to appease the conscience. It cannot be gainsaid that women who have been kept in jail under the guise of 'protective custody' have suffered involuntary deprivation of liberty for long periods without any fault on their part. We may point out that this so-called 'protective custody' is nothing short of a blatant violation of personal liberty guaranteed under Article 21 of the Constitution."

The court rejected the argument of the government that it had to keep the women in protective custody in jails because its welfare home had been shut down. Therefore, the court directed all women and children under 'protective custody' in jail to be released immediately and taken to welfare homes or rescue homes.

4. RIGHT TO LEGAL AID

Hussainara Khatoon (IV) vs. State of Bihar

The Supreme Court, in continuation of its last three orders, insists on monitoring the conditions of the undertrial prisoners and the steps taken by the Bihar government. Hussainara Khatoon IV is notable mainly for its observations on legal aid to the prisoners. Apart from this, it reiterates their right to speedy trial, and strict compliance of the provisions of Cr.P.C.

Ruling: The judgement quoted Article 39-A of the Constitution which makes "equal justice and free legal aid" a directive principle of state policy. Though a directive principle is not enforceable as a matter of right, the court held in this case that free legal aid is an inalienable element of 'reasonable, fair and just' procedure. Without legal aid a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore, clearly an essential ingredient of fair and just procedure and must be held implicit in the guarantee of Article 21 (life and liberty). This is a constitutional right of every accused person who is unable to engage a lawyer due to poverty or incommunicado situation and the state is under a mandate to provide a lawyer to such an accused. In this particular case, the Bihar government was

4. Judges: P.N. Bhagwati and D.A. Desai.
AIR 1979 SC 1369; (1980)1 SCC 98.

directed to provide lawyers to the undertrial prisoners at state cost for moving their bail applications before magistrates.

The state authorities had submitted to the court that the prisoners were regularly produced before the courts "as and when required by the courts." The Supreme Court stated that this was not in compliance with Section 167(2) of Cr.P.C.

The court also released those who had been in jail for periods more than the maximum term imposable on them on conviction.

5. FINAL ORDERS IN UNDERTRIAL CASES

Hussainara Khatoon V and VI vs. State of Bihar

These two judgements bring to an end the saga of the undertrial prisoners. They reemphasise the points made in the earlier judgements, like the right to speedy trial and free legal aid. They direct the Bihar governments to provide details of the number of magistrates and judges available in that state and data about the cases pending before them. The court demanded these data as it felt that the number of judges was not adequate to deal with the pending cases.

Ruling: Only two points are new in these judgements. Firstly, the court stated that lunatics and persons of unsound mind should not be kept in ordinary jails along with other undertrial prisoners. Secondly, the magistrates before whom the prisoners are produced repeatedly must, before remanding them to jail again, tell them that they are entitled to bail. The magistrates must apply their mind and should not pass remand orders automatically. Section 167(2)(a) Cr.P.C. should be kept in view. The state is also bound to provide free legal aid to those prisoners. If it is not provided, the trial itself may run the risk of being held illegal.

6. CRIMINAL APPEAL BY THIRD PARTY

P.S.R. Sadhanantham vs. Arunachalam

Though this is strictly not a PIL, this judgement is very significant on the question of *locus standi* or standing in criminal appeals. The court ruled that if the state fails to appeal against the acquittal of a criminal, a citizen can

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5 Judges: P.N. Bhagwati, O.C. Reddy, and A.P. Sen
AIR 1979 SC 1819; AIR 1979 SC 1377;(1980)1 SCC 108, 115.

6. Judges: V.R. Krishna Iyer, S.M. Fazal Ali, D.A. Desai, R.S. Pathak and A.D. Koshal.
(1980)3 SCC 141.

scendental meditation, self-expression through work, facilities for studies and artistic development.

About 'B' Class status for certain prisoners, the court said that going by the petitioner's statement, it was a pampering process much abused by officers and, in a 'class' culture, obnoxious to the Constitution. "Equality before the law cannot coexist with affluent blackguards being looked after with luxury and solitude and lowly indigents being treated as pariahs inside the prison," the court observed.

9. POLICE PUT OUT UNDERTRIALS' EYES

Anil Yadav vs. State of Bihar

Soon after the undertrials cases, another pathetic case from Bihar came to the notice of the Supreme Court. This time, it was the blinding of undertrial prisoners. About 20 such prisoners were tortured by the police during the investigation, their eyes were pierced with spikes and acid poured into them making them totally blind. The court gave them medical aid and rehabilitation facilities at the expense of the Bihar government. Though they could claim compensation from the government for the pain suffered, the court did not examine that issue. Originally the judges had observed that it would be done. But later those judges had retired, and the interest in the judiciary and the media waned. Therefore, the five cases relating to the blinding of Bihar undertrials lay down very little law, except reaffirming the points already declared in the Hussainara Khatoon cases (legal aid and right of prisoners). But these cases are excellent examples on how the court can provide immediate relief to the sufferers and take quick steps to trace the guilty policemen.

Facts: As stated before, some undertrial prisoners were blinded by the police in the Bhagalpur central jail. According to the local populace, this was a very common practice in the district where crimes abound and the police is brutalised. A local lawyer was moved by the number of such instances, but did not know initially what to do in this situation. But he had read about the Hussainara Khatoon cases pending in the Supreme Court at that time. He found out the name of the Supreme Court lawyer, Mrs. Kapila Hingorani, who was conducting the case. Though he had no personal acquaintance with her, and knew her name only from the newspaper reports of the case, he wrote a half-page letter to her informing her of the blinding

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9. Judges: Y.V. Chandrachud and O. Chinnappa Reddy.
(1981)1 SCC 622.

phenomenon. This letter was submitted by her to the Supreme Court as a writ petition. The Supreme Court was at its peak of activism in those days (December 1980), and therefore two benches vied with each other, as it were, to pass orders in favour of the blinded. The Anil Yadav case was seized by the Chief Justice's bench, while another group of blinded petitioners appeared in person before the bench of Justice P.N. Bhagwati, a few days later. The cases ran parallel in two courts.

Ruling: As stated earlier, there is very little development in law in this case, but as a study of the court's powers to grant relief to the suffering citizens, it is very useful. In this case, the court called for reports of doctors who had examined the victims. Eight out of ten of the undertrials had lost their sight. The order said the medical report would shock the conscience of mankind. There has been flagrant violation of constitutional safeguards to citizens' freedom, life and liberty (Article 19,21). There is nothing that the court can do to restore the physical damage, the order said. But the offenders must be brought to book. Therefore, the superintendent of the central jail was asked to give the names of the policemen and jail staff who were in charge of the blinded, and the names of doctors who were in charge of the jail dispensary or hospital, and other details.

The court also asked its registrar and another official to visit the prison and talk to the blinded prisoners and others similarly situated to get the facts. The court specifically directed that the two officials shall be given all facilities by the authorities to do the assigned work. They shall be allowed to talk to the prisoners "beyond the hearing of any jail officer or police officer and to record their statements."

10. MEDICAL AND LEGAL AID TO BLINDED

Khatri (I) vs. State of Bihar

This is a batch of cases relating to 17 blinded undertrial prisoners of Bihar. This one came up before the bench presided over by Justice Bhagwati, after the Anil Yadav case discussed earlier. The court passed several directions to ensure medical treatment and legal aid to the victims.

Facts: The facts are the same as in the Anil Yadav case except for the physical presence of two blinded prisoners in the court this time. The judges could see them closely, and the newspapers front-paged their photographs and tragic tales the next day. The order said: "We are shocked to see the

10. Judges: P.N. Bhagwati and E.S. Venkataramiah.
(1981)1 SCC 623.

plight of these two unfortunate persons who have been the victims of the barbaric cruelty of the police. They are standing before us with their eyes corroded and destroyed. . . ."

Ruling: The court directed that all the blinded prisoners, even those whose cases are not before the court, shall be freely treated at the Rajendra Prasad Opthalmic Institute in Delhi. The Bihar government shall bring all such cases to Dellhi.

The court further called for details of their arrests, dates of production before the magistrates and remand. It also asked the authorities to state how long the prisoners were in jail, the names of officers who dealt with their cases, and whether a lawyer was provided to them according to the rulings in the Hussainara Khatoon cases. The court also wanted to know whether the district judge had visited the jail in 1980 (as required by law) and whether he saw any blinded prisoners.

The state government was also asked to pay the prisoners the expenses of bringing a relative of theirs to Delhi to attend on them. The court also asked the government to pay their maintenance expenses while in Delhi.

11. ACTION AGAINST GUILTY POLICEMEN

Khatri II, III vs. State of Bihar

These two orders are in continuation of the earlier ones in the blinded prisoners' case. The court investigates into the progress of the implementation of the earlier orders and takes follow-up measures to ensure that the authorities comply with the directions.

Ruling: These orders reiterate the principles laid down in the Hussainara Khatoon judgements. They remind the authorities of their duty to provide free legal aid from the time an accused is produced before the magistrate for the first time. Financial constraints and administrative inability are no excuse. It is also not a valid argument to say that the accused did not ask for it. It should be offered to them as it is their right.

The court also emphasised that the constitutional requirement that the arrested person should be produced before a magistrate within 24 hours should be strictly adhered to. The judicial magistrate should also not mechanically sign remand orders even if the accused is not physically produced before him.

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11. Judges: P.N. Bhagwati and A.P. Sen.
(1981)1 SCC 627.

The court further directed the police to complete the investigations into charges against the prisoners as well as the guilty policemen in three months. It also made directions for the rehabilitation of the prisoners.

12. SC REJECTS GOVERNMENT'S OBJECTIONS

Khatri (IV) vs. State of Bihar

In continuation of the three earlier orders, the Supreme Court dealt with the rights of the prisoners in a more detailed manner with specific reference to Sections 162 and 172 of Cr.P.C.

Facts: The Bihar Government objected to the production in the court of CID reports into the blinding incidents, arguing that the accused were not entitled to see them.

Ruling: The Supreme Court rejected the objection of the state government saying that the bar under Sections 162 and 172 of the Cr.P.C. against production or use of evidence or case diary was not applicable in a civil case or in a writ petition. The judgement is a detailed discussion on the Cr.P.C. provisions, which would be useful mainly for a criminal lawyer. The court passed several more orders in this case, but they are not of wide application and therefore they are omitted.

13. OUT WITH OLD PRISON RULES

Kishore Singh vs. State of Rajasthan

The prison rules followed by the jails in the country were originally drafted by the British colonialists long ago. They continued for decades since Independence. With the new interpretation of the fundamental right to life and liberty, the rules became outdated and many of them unconstitutional. This case is one such instance calling for reforms in prison rules and practices.

Facts: The case was started off by a telegram received by a Supreme Court judge from the Jaipur central jaill on behalf of three prisoners. It said that a convict had been confined in a cell with fetters for more than eight months. The Supreme Court released him and two others like him in the same jail by telegraphic orders.

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12. Judges: P.N. Bhagwati and Baharul Islam.
(1981)1 SCC 493.
13. Judges: V.R. Krishna Iyer and R.S. Pathak.
(1981)1 SCC 503.

Ruling: In this judgement, the court reiterated the laws laid down in Sunil Batra and Rakesh Kaushik cases. A prisoner is entitled to fundamental rights under Articles 14,19 and 21, though certain others like freedom of movement is curtailed. Solitary confinement is justified only in extreme cases of compelling necessity for security of other prisoners or against escape, after complying with the rules of natural justice. Infliction of torture is illegal. The court also reminded jail authorities of the principles it had laid down in the above cases.

The court gave this direction to all state governments: "We find that the old rules and circulars and instructions issued under the Prisons Act are read incongruously with the Constitution, especially Article 21 and interpretation put upon it by this court. We, therefore, direct the State of Rajasthan—and indeed, all the other State Governments in the country—to convert the rulings of this court bearing on prison administration into rules and instructions forthwith so that violation of the prisoners' freedom can be avoided and habeas corpus litigation may not proliferate. After all, human rights are as much cherished by the State as by the citizen."

14. WHO CAN MOVE A PIL?

S.P. Gupta vs. Union of India

This judgement has often been described as the "Charter of PIL." The main question was, who is entitled to move the high court or the Supreme Court when there is a violation of a fundamental right? Is it only the person who suffered, or can anyone else on behalf of the sufferer move the court? This is the subject of this judgement, which settled this question (*locus standi*, or 'standing') once and for all in public interest cases. It widened the *locus standi* of public spirited persons before the court.

Facts: The case referred to the transfer of some high court judges to another high court against their will, and non-confirmation of some high court judges after their appointment allegedly because of some political reasons. The judges themselves did not move the court, but some public spirited lawyers moved the high courts and the Supreme Court challenging the action of the government. The government opposed the petitions asserting that the petitioners were "meddlesome interlopers" who had no *locus standi* before the court and therefore their petitions should be dis-

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14. Judges: P.N. Bhagwati, Fazal Ali, V.D. Tulzapurkar, D.A. Desai, R.S. Pathak, E.S. Venkataramaiah and A.C. Gupta.
1981 (Suppl) SCC 87; AIR 1982 SC 149.

missed at the threshold itself. The Constitution bench rejected this argument and heard the case for three months after which they delivered a one-thousand-page judgement relating to judiciary. The main judgement by Justice Bhagwati dealt in detail with the question of *locus standi* and decided the issue once and for all.

Ruling: The traditional rule in regard to *locus standi* is that judicial redress is available only to a person who has suffered a legal injury by reason of violation of his legal right or legally protected interest by an action of a public authority. This is a rule of ancient vintage and it arose during an era when private law dominated the legal scene and public law had not yet been born.

Now, it may be taken as well established that where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right or any burden is imposed in contravention of any constitutional or legal provision or without authority of law or any such legal wrong or legal injury or illegal burden is threatened and such person or determinate class of persons is by reason of disadvantaged position, unable to approach the court for relief, any member of the public can maintain an application for an appropriate direction, order or writ, in the high court under Article 226, and in case of breach of any fundamental right in the Supreme Court under Article 32 seeking judicial redress for such legal injury.

Where the weaker sections of the community are concerned, such as undertrial prisoners, inmates of protective homes for women, or Harijans who are exploited in construction works, who are helpless victims of an exploitative society and who do not have easy access to justice, the Supreme Court will not insist on a regular writ petition to be filed by the public spirited individual espousing their cause. The court will readily respond to even a letter addressed by such individual acting *pro bono publico*.

It is true that the court has to follow the procedures and formalities. But it must not be forgotten that procedure is but a handmaiden of justice and the cause of justice can never be thwarted by any procedural technicalities. The court would cast aside the technical rules and treat the letter of the public-minded individual as a writ petition and act upon it.

We hope and trust that the high courts of the country will also adopt this pro-active, goal-oriented approach.

But we must hasten to make it clear that the individual who moves the court for judicial redress in cases of this kind must be acting bona fide with

a view to vindicating the causes of justice and if he is acting for personal gain or private profit or out of political motivation or other oblique consideration, the court should not allow itself to be activised at the instance of such person and must reject his application at the threshold, whether it be in the form of a letter addressed to the court or even in the form of a regular writ petition filed in the court.

As a matter of prudence, the court may confine this strategic exercise to cases where legal wrong or injury is caused to a determinate class or group of persons or the constitutional or legal right of such determinate class is violated. As far as possible, the court may not entertain cases of individual wrong or injury at the instance of a third party, where there is an effective legal aid organisation which can take care of such cases.

15. DISCLOSURE OF GOVERNMENT DOCUMENTS

S.P. Gupta vs. Union of India

This judgement was earlier discussed in the context of *locus standi*, or standing, of petitioners in public interest cases. Another important aspect of this judgement is its ruling on disclosure of government documents in court proceedings. Sometimes it might become necessary to produce these documents to discover the intention of the government and to test whether the decision was taken legally. In such situations, a reading of this judgement would be very helpful.

Facts: The case is related to the transfer of some judges and non-confirmation of some others allegedly for political or other invalid reasons. The petitioners originally had only circumstantial evidence or surmises to go by. So they asked the court to direct the government to produce the correspondence exchanged between the Union Law Minister, the Chief Justice of Delhi and the Chief Justice of India. They argued that these documents were relevant to the enquiry before the court and therefore they should be disclosed to them. The government vehemently objected to this request and claimed "privilege" on such documents. It argued that under Article 74(2), "the question whether any, and if so what, advice was tendered by ministers to the President shall not be inquired into in any court." Section 123 of the Indian Evidence Act also protects government documents from disclosure in court.

Ruling: The court gave a liberal meaning to the law of privileged documents and in this case, asked the government to produce them. They were later published in the press.

The judgement stated that law should not remain static. It should be interpreted taking into account the social, economic and political setting. In a democracy, the people can fulfil their role only if there is an open government and there is full access to information in regard to its functioning. A government which pursues secret aims or which operates in undue secrecy will lose the trust of the people.

The judgement discussed several earlier rulings on this subject and concluded that "the court has to balance the detriment to public interest on the administrative and executive side which would result from the disclosure of the document against the detriment to public interest on the judicial side which would result from non-disclosure of the document though relevant to the proceeding." In short, the court must weigh the public interest in each case and take a decision.

The judgement deals with this issue elaborately from constitutional and procedural angles. Those who have similar problems may read it fully.

16. CHILDREN IN ADULT PRISONS

Munna vs. State of U.P.

This case deals with young offenders kept along with adult prisoners, a practice which is banned under the Juvenile Justice Act and various prison rules. This issue recurs in PIL cases from time to time. The problem attracts attention only at such times and is easily forgotten. This case, for instance, was not concluded and faded away with time.

Facts: Munna was one of about hundred undertrial children kept in the Kanpur central jail, though there was a children's home in that city. Mr. Madhu Mehta, a social activist working under the banner of Hindustan Andolan, reportedly entered the jail incognito and found the conditions of the children lodged there abominable. According to his report published in a national daily, young boys of 10 to 14 years were being "supplied to convicts for their delectation" and Munna was in agony because "after the way he was used, he was unable to sit." Three writ petitions were filed on the basis of this news report and the Supreme Court issued notice to the U.P.

16. Judges: P.N. Bhagwati and R.S. Pathak.
(1982)1 SCC 545.

Government. Meanwhile, a human rights organisation filed a similar petition in the Allahabad High Court. The High Court requested the seniormost sessions judge of Kanpur to visit the jail and make enquiries. He made a report to the High Court stating that there were at least seven youths in the jail. But curiously, most children were released when the petitions were filed. So the judge could not interview them. All these facts were put before the Supreme Court also.

Ruling: The jail authorities denied that Mr. Madhu Mehta ever visited the jail. But the court observed that since he claimed that he entered the prison incognito, he should be heard about it. The court also directed the secretary of the State Board of Legal Aid and Advice to contact the children who were hurriedly released before the visit of the sessions judge. Further, the superintendent of the jail was asked to explain the circumstances under which the children were released and produce the magistrate's orders regarding them. One boy was transferred to the children's home in the same hasty manner. So the court asked the jail authorities to explain why it was done and why it could not be done earlier. The court then explained the provisions of the U.P. Children's Rules to show how anxious is law to protect children from contamination from hardened criminals.

17. INSANE PUT IN PRISONS

Veena Sethi vs. State of Bihar

This is yet another case of undertrials from Bihar. The court took several remedial measures and used this judgement as an opportunity to reply to critics of PIL, which was at its initial stages.

Facts: A letter was addressed to one of the judges by the Free Legal Aid Committee, Hazaribagh, alleging illegal detention of prisoners in the jail there. They were in jail for two or three decades, none to care for them. At least 16 were insane when they were brought to the prison. The court issued notice to the state government which responded with details of the prisoners. They were released and given medical treatment.

Ruling: The first part of the judgement is a reply to the critics of PIL in the Supreme Court. It said:

"There are some people who are critical of the practice adopted by this court of taking judicial action on letters addressed by public spirited indi-

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17. Judges: P.N. Bhagwati and D.A. Desai.
(1982)2 SCC 583.

viduals and organisations for enforcement of the basic human rights of the weaker sections of the community. This criticism is based on a highly elitist approach and proceeds from a blind obsession with the rites and rituals sanctified by an outmoded Anglo-Saxon jurisprudence. The most complete refutation of this criticism is provided by the action taken by the court in this case. It is a letter which set the judicial process in motion and but for this letter which drew the attention of the court to the atrociously illegal detention of certain prisoners in the Hazaribagh central jail for almost two or three decades without any justification whatsoever, these forgotten specimens of humanity languishing in jail for years behind stone walls and iron bars, deprived of freedom and liberty which are the inalienable rights of a human being, would have continued to remain in jail without any hope of ever walking out of its forbidding environment and breathing the fresh air of freedom. These prisoners were lost in the oblivion of time and had become merely ticket numbers in the Hazaribagh central jail. All that they could do was to cry in despair, 'How long?' with their cry unheeded and unanswered. The letter of the Free Legal Aid Committee, Hazaribagh, brought the plight of these prisoners to the notice of the Court."

If the poor are allowed to languish in jails without the slightest justification, the rule of law would become meaningless, for the rule of law does not exist merely for those who have the means to fight for their rights and very often for perpetuation of the status quo which protects and preserves their dominance and permits them to exploit large sections of the community but exists also for the poor and the downtrodden, the ignorant and the illiterate who constitute the large bulk of humanity in this country. It is the solemn duty of the court to protect and uphold the basic human rights of the weaker sections of society, and it is this duty the Supreme Court is trying to discharge in entertaining this public interest litigation.

In the second part of the judgement, the court dealt with individual cases and remarked:

"There must be an adequate number of institutions for looking after the mentally sick prisoners and that the practice of sending lunatics or persons of unsound mind to jail for safe custody is not at all a healthy or desirable practice, because jail is hardly a place for treating those who are mentally sick. The court, therefore, directed the jail superintendent to have such mental patients examined by some psychiatrists once every six months and submit a report to the district judge and if as a result of such examination, it is found at any stage that the prisoner concerned has become sane, the

district judge will immediately order his release from the jail and the state government will provide him the necessary funds for meeting the expenses of his journey to his native place as also for his maintenance for a period of one week. The court refrained from judicially interfering with the cases where the prisoners of unsound mind were sentenced for different offences and their sentence of imprisonment is yet to expire. But in respect of such prisoners also, the court directed that half-yearly reports about their mental condition must be submitted to the state government."

The court made it clear that the writ petition, in regard to those ordered by it to be released forthwith, was not finally disposed of because the question would still remain to be considered whether these prisoners are entitled to compensation from the state government for their illegal detention in contravention of Article 21 of the Constitution.

18. UNDERTRIAL LUNATIC RELEASED

Sant Bir vs. State of Bihar

This is one more case of an undertrial languishing in jail for years, dubbed as a lunatic. The court passed several directions to detect such cases in the prisons of Bihar.

Facts: This case was brought before the Supreme Court by the Free Legal Aid Committee, Hazaribagh. Sant Bir was sentenced to life imprisonment for murder in 1949. Since he had appeared to be mentally unsound, the jail authorities were directed by the magistrate to watch his condition and report after six months. The reports indicated that till 1955, he was insane. Nothing was recorded after that, but after 11 years he was reported harmless and normal. A medical examination in 1969 showed that he had recovered and was fit for discharge. But the government, for some reason, ordered that he be kept in custody for three more years. The government further demanded surety from his father for his release to which there was no response.

Ruling: After releasing Sant Bir, the court odered periodical surveys of the jail to find out similar cases. The court also said that the question of compensation to Sant Bir, has to be considered at a later stage. This has not been done so far. Excerpts from the judgement:

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18. Judges: P.N. Bhagwati and A.N. Sen.
(1982)3 SCC 131.

It is shocking to our conscience that a perfectly sane person should have been incarcerated within the walls of a prison for almost 16 years without any justification in law whatsoever. If this had been a solitary case, it could perhaps have been explained away by offering some excuse, though I do not see how any excuse can be valid when it involves imprisonment of an individual for almost 16 years without any authority of law. But we find from the decision given by this court in *Veena Sethi vs. State of Bihar* that several other prisoners who had become sane long years ago were also detained in prison in the State of Bihar as criminal lunatics for years and they continued to rot in jail until they were released by this court.

The story narrated by us above makes very sad and distressing reading. Have we lost all respect for the dignity of the individual and the worth of the human person so nobly enshrined in our Constitution that we are prepared to forget a person once he is sent to jail and we do not care to enquire whether he is continued to be detained in the jail according to law or not? It should be a matter of shame for the society as well as the administration to detain a person in jail for over 16 years without authority of law. We would therefore direct that the petitioner should be released from jail and set at liberty forthwith. The State Government will provide to the petitioner at the time of release necessary funds for the purpose of meeting the expenses of his journey to his native place as also maintenance for a period of one week.

We may point out that the petitioner has been able to obtain this relief from us because his case was brought before us by the Free Legal Aid Committee, Hazaribagh. But we cannot rule out the possibility that there may be many more prisoners in the jails in Bihar who are continuing to be detained as criminal lunatics though they have become sane long ago. The Free Legal Aid Committee, Hazaribagh, is rendering yeoman service in the field of legal support for the poor, but even so it cannot reach all cases where persons are being detained as criminal lunatics though they have become perfectly sane and are fit for discharge.

We would therefore direct the state government to file in court a statement setting out the names and particulars of persons who are detained as lunatics in the various prisons in Bihar, whether after conviction or otherwise.

We would also direct the state government to make an annual census as on October 31 of each year of undertrial persons who are in jail for a period of more than 18 months without committal proceedings or trial having commenced before the magistrate or in case of commitment, before

the court of sessions. Such census list shall be filed by the state government with the Registrar of the High Court of Patna on or before December 31 of each year. We would request the High Court to ensure that such census list is filed by the state government on or before December 31 in each year and if it is not so filed, the High court will take necessary action in that behalf. The High Court will also scrutinise such census list in order to satisfy itself that there are no undertrial prisoners who are detained in jail for more than 18 months without their trial having been commenced, either before the magistrate or the court of sessions, and if there are such undertrial prisoners, the High Court will take steps for the purpose of expediting the trial of such undertrial prisoners.

19. HARASSMENT OF ACCUSED

Free Legal Aid Committee, Jamshedpur vs. State of Bihar

This was a case on behalf of those accused in Bihar who were on bail but who had to be produced before the court every 14 days, causing unnecessary hardship. Their problem was taken up by a voluntary organisation of Jamshedpur and they got certain reliefs.

Ruling: The order said that the production of persons on bail every 14 days was not required by law until the charge-sheet was filed and the process was issued by the court.

There was also another difficulty and it was that in cases triable by the court of session, the practice followed was that when an accused was released on bail by the magistrate, the bail is granted to him only during the pendency of the enquiry before the magistrate, with the result that when the case was committed to the court of session, he was rearrested and brought before the court of session where he had to apply once again for fresh bail. This caused considerable inconvenience to the accused without any corresponding advantage so far as the administration of criminal justice was concerned. This situation can, however, easily be avoided, said the court, because there is a provision in Section 441, sub-section (3) of the Cr.P.C., under which bail can be granted to an accused so as to bind him to appear before the court of session, in which event, on committal, he would not have to be rearrested and brought before the court of session.

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19. Judges: P.N. Bhagwati and A.N. Sen.
(1982)3 SCC 378.

20. ENFORCEMENT OF MINIMUM WAGES

People's Union for Democratic Rights vs. Union of India

This judgement deals with three aspects. First, it justifies public interest litigation, which at the time of writing the judgement was being criticised by some lawyers and journalists as an unbridled horse. Secondly, it held that forcing a person to work paying him less than the minimum prescribed wages would amount to *begar* or forced labour, which is banned by the Constitution. Thirdly, the court ruled that a writ petition can be filed in a high court or the Supreme Court against the government or a local authority to ensure that private contractors paid the minimum wages. Since forced labour is a violation of the fundamental right guaranteed under Article 23, a writ petition can be filed asking the court to direct the authorities to ensure payment of minimum wages.

Facts: The Delhi Administration and local authorities in the Union Territory entrusted various construction works relating to the Asian Games 1982 to contractors. They in turn employed workers from different parts of the country through middlemen. Following reports of the poor conditions of these workers, the petitioner organisation engaged three social scientists to study their conditions. On the basis of the report, it sent a letter to the court alleging violation of several labour laws. This letter was treated as a writ petition and the government was issued notice. In the first order, the court asked them to ensure that the contractors complied strictly with the labour laws. Later, this judgement giving detailed reasons for taking the action was given.

Ruling: The first part of the judgement deals with the reason for the development of public interest litigation. This exercise was done earlier in *S.P. Gupta* case by a constitution bench. But it had been criticised in certain quarters. So the court took this opportunity to reiterate its stand in a more forceful manner. Excerpts:

Before we proceed to deal with the facts giving rise to this writ petition, we may repeat what we have said earlier in various orders made by us from time to time dealing with public interest litigation. We wish to point out with all the emphasis at our command that public interest litigation which is a strategic arm of the legal aid movement and which is intended to bring justice within the reach of the poor masses, who constitute the low visibility area of humanity, is a totally different kind of litigation from the

20. Judges: P.N. Bhagwati and Baharul Islam.
(1982)2 SC 235.

ordinary traditional litigation which is essentially of an adversary character where there is a dispute between two litigating parties, one making claim or seeking relief against the other and that other opposing such claim or resisting such relief. Public interest litigation is brought before the court not for the purpose of enforcing the right of one individual against another as happens in the case of ordinary litigation, but it is intended to promote and vindicate public interest which demands that violations of constitutional or legal rights of large numbers of people who are poor, ignorant or in a socially or economically disadvantaged position should not go unnoticed and unredressed. That would be destructive of the rule of law which forms one of the essential elements of public interest in any democratic form of government.

The rule of law does not mean that the protection of the law must be available only to a fortunate few or that the law should be allowed to be prostituted by the vested interests for protecting and upholding the status quo under the guise of enforcement of their civil and political rights. The poor too have civil and political rights and the rule of law is meant for them also, though today it exists only on paper and not in reality. If the sugar barons and the alcohol kings have the fundamnetal right to carry on their business and to fatten their purses by exploiting the consuming public, have the *chamars* belonging to the lowest strata of society no fundamental right to earn an honest living through their sweat and toil? The former can approach the courts with a formidable army of distinguished lawyers paid in four or five figures per day and if their right to exploit is upheld against the government under the label of fundamental right, the courts are praised for their boldness and courage and their independence and fearlessness are applauded and acclaimed.

But, if the fundamental right of the poor and helpless victims of injustice is sought to be enforced by public interest litigation, the so-called champions of human rights frown upon it as waste of time of the highest court in the land, which, according to them, should not engage itself in such small and trifling matters.

Moreover, these self-styled human rights activists forget that civil and political rights, priceless and invaluable as they are for freedom and democracy, simply do not exist for the vast masses of our people. Large numbers of men, women and children who constitute the bulk of our population are today living a sub-human existence in conditions of abject poverty; utter

grinding poverty has broken their back and sapped their moral fibre. They have no faith in the existing social and economic system. What civil and political rights are these poor and deprived sections of humanity going to enforce?

The only solution for making civil and political rights meaningful to these large sections of society would be to remake the material conditions and restructure the social and economic order so that they may be able to realise the economic, social and cultural rights. There is indeed close relationship between civil and political rights on the one hand and economic, social and cultural rights on the other and this relationship is so obvious that the International Human Rights Conference in Teheran called by the General Assembly in 1968 declared in a final proclamation: "Since human rights and funamental freedoms are indivisible, the full realisation of civil and political rights without the enjoyment of economic, social and cultural rights is impossible."

Of course, the task of restructuring the social and economic order so that the social and economic rights become a meaningful reality for the poor and lowly sections of the community is one which legitimately belongs to the legislature and the executive, but mere initiation of social and economic rescue programmes by the executive and the legislature would not be enough and it is only through multi-dimensional strategies including public interest litigation that these social and economic rescue programmes can be made effective. Public interest litigation, as we conceive it, is essentially a cooperative and collaborative effort on the part of the petitioner, the state or public authority and the court to secure observance of the vulnerable sections of the community and to reach social justice to them. The state or public authority against whom public interest litigation is brought should be as much interested in ensuring basic human rights, constitutional as well as legal, to those who are in a socially and economically disadvantaged position, as the petitioner who brings the public interest litigation before the court. The State or public authority which is arrayed as a respondent in public interest litigation should, in fact, welcome it, as it would give it an opportunity to right a wrong or to redress an injustice done to the poor and weaker sections of the community whose welfare is and must be the prime concern of the state or the public authority.

There is a misconception in the minds of some lawyers, journalists and men in public life that public interest litigation is unnecessarily cluttering up the files of the court and adding to the already staggering arrears of cases

which are pending for long years and it should not therefore be encouraged by the court. This is, to our mind, a totally perverse view smacking of elitist and status quoist approach. Those who are decrying public interest litigation do not seem to realise that courts are not meant only for the rich and the well-to-do, for the landlord and the gentry, for the business magnate and the industrial tycoon, but they exist also for the poor and the downtrodden, the have-nots and the handicapped and the half-hungry millions of our countrymen. So far the courts have been used only for the purpose of vindicating the rights of the wealthy and the affluent. It is only these privileged classes which have been able to approach the courts for protecting their vested interests. It is only the moneyed who have so far had the golden key to unlock the doors of justice. But, now for the first time the portals of the court are being thrown open to the poor and the downtrodden, the ignorant and the illiterate, and their cases are coming before the courts through public interest litigation which has been made possible by the recent judgement delivered by this Court in *S.P. Gupta vs. Union of India*(14). Millions of persons belonging to the deprived and vulnerable sections of humanity are looking to the courts for improving their life conditions and making basic human rights meaningful for them. They have been crying for justice but their cries have so far been in the wilderness. They have been suffering injustice silently with the patience of a rock, without the strength even to shed any tears. Mahatma Gandhi once said to Gurudev Tagore, "I have had the pain of watching birds, who for want of strength could not be coaxed even into a flutter of their wings. The human bird under the Indian sky gets up weaker than when he pretended to retire. For millions it is an eternal vigil or an eternal trance." This is true of the "human bird" in India even today after more than 30 years of independence. The legal aid movement and public interest litigation seek to bring justice to these forgotten specimens of humanity who constitute the bulk of the citizens of India and who are really and truly the "People of India" who gave to themselves this magnificent Constitution.

It is true that there are large arrears pending in the courts but, that cannot be any reason for denying access to justice to the poor and weaker sections of the community. No state has a right to tell its citizens that because a large number of cases of the rich and the well-to-do are pending in our courts, we will not help the poor to come to the courts for seeking justice until the staggering load of cases of people, who can afford, is disposed of. The time has now come when the courts must become the courts for the poor and struggling masses of this country. They must shed their character as

upholders of the established order and the status quo. They must be sensitised to the need of doing justice to the large masses of people to whom justice has been denied by a cruel and heartless society for generations. The realisation must come to them that social justice is the signature tune of our Constitution and it is their solemn duty under the Constitution to enforce the basic human rights of the poor and vulnerable sections of the community and actively help in the realisation of the constitutional goals. This new change has to come if the judicial system is to become an effective instrument of social justice, for without it, it cannot survive for long. Fortunately, this change is gradually taking place and public interest litigation is playing a large part in bringing about this change. It is through public interest litigation that the problems of the poor are now coming to the forefront and the entire theatre of the law is changing. It holds out greater possibilities for the future. This writ petition is one such instance of public interest litigation.

The two other issues discussed in this judgement are of technical nature, but very significant. Article 23 remained a provision without teeth in the Constitution till this judgement. It merely banned *begar* or forced labour. By interpretation, the court said that *begar* is committed not only when the worker is forced to work against his will as in the case of slavery, but also when inadequate payment is made. "Forced" labour is not merely of physical or legal force, but also force arising from the compulsion of economic circumstances. If a person in want has no choice but provide his services to another for less than minimum wages, it is forced labour under Article 23. Such a person is entitled to move a high court or the Supreme Court for minimum wage. Thus this judgement put the remedy of a writ petition in the hands of an exploited worker.

The court also met another objection of the authorities against allowing such writ petitions. Normally a writ petition is against the government and its arms. How can a writ petition be filed against the government straightaway for the fault of private contractors? The court said even in this case, a writ petition can be maintained. It was the government which entrusted the work to the contractors. So it cannot escape their obligation for observance of the various labour laws by the contractors. It was the principal employer and if a worker's fundamental right is violated by *begar* the government or other public authorities would be accountable.

21. LIMITS OF RIGIIT TO AGITATE

R.S. Sodhi vs. Union of India

What are the rights of political or religious groups to agitate affecting law and order? To what extent can the police control their activities? These issues came up in this case which dealt with the Sikh agitation in 1982.

Facts: The Akali Party threatened a mass rally to Delhi which was hosting the Asiad in 1982. Fearing disruption of the international event, Haryana and U.P. undertook various steps, including barricading the highways and resorting to seizures and arrests. The petitions were filed by some lawyers and MPs to direct the governments to remove the obstructions and allow unhindered use of the highways without making any discrimination against the Akali Sikhs on the ground of religion. The action of the government was illegal as the right to movement was obstructed, it was argued.

Ruling: Rejecting the argument, the court stated:

We agree that no one is entitled to barricade a highway so as to prevent members of the public from using it while they are on their lawful business in the pursuit of normal avocations of life. But the police, whose duty it is to enforce law and order in the wake of threatened mass agitations which are reasonably likely to lead to breach of public peace, are entitled in the discharge of that duty to impose reasonable restraints on the physical movement of members of the public in order to protect public property and the avoidance of needless inconvenience to other citizens in their lawful pursuits. But all such restraints on personal liberty, if at all, have to be commensurate with the object which furnishes their justification. They must be minimal and cannot exceed the constraints of the particular situation, either in nature or in duration. Above all, they cannot be used as engines of oppression, persecution, harassment or the like. The sanctity of person and of privacy has to be maintained at all costs and that cannot ever be violated under the guise of maintenance of law and order.

We feel uneasy and concerned to hear that policemen of certain states have violated the norms of decency in their dealing with the situation arising out of the Akali-Asiad tangle. We assume for lack of better evidence that the grievance made by the petitioners before us is more the offspring of a natural feeling of resentment at being stopped and searched than of any substantial invasion of their personal freedom. If and when there is proof of the latter,

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21. Judges: Y.V. Chandrachud and A.N. Sen.
(1983)1 SCC 140.

courts may have to step in and stop the excess. For the rule of law requires that no person shall be subjected to harsh, uncivilised or discriminatory treatment even when the objective is the securing of the paramount exigencies of law and order. Therefore, no Sikh can be allowed to be so treated if our Constitution has to have any meaning and effect.

We believe it not to be true that any Chief Minister has made a public declaration that police officers who will treat the Akali Sikhs harshly will be dealt with lightly. It is incredible that any highly placed person in his senses can possibly make such a statement, with the kind of pressure of public opinion and the press which, fortunately, we have in our country today.

There does not appear to be any executive order in existence, in writing at any rate, authorising the police to barricade any highway or to subject every Sikh in motion to physical restraint. But in an appropriate case, a presumption may well be drawn as to the existence of such an order if it is found that the police are generally acting systematically according to a set and uniform pattern or are otherwise engaged in a large-scale operation of any similar or sinister kind. For want of acceptable evidence, we hesitate to draw that presumption in this case and will leave the matter where it lies for the time being. Redress may, if so advised, be sought in individual cases by those aggrieved by the alleged acts of excesses.

22. NO REDUCTION IN MINIMUM WAGES

Sanjit Roy vs. State of Rajasthan

Earlier, the Supreme Court had ruled in the Asiad case (20) that minimum wage is a fundamental right of the worker. In this case, the Rajasthan government passed a law exempting certain works from the Minimum Wages Act. This was held to be illegal. Minimum wage cannot be subject to conditions.

Facts: The Public Works Department of Rajasthan constructed a road in a backward area as part of famine relief work to provide relief to persons affected by drought and scarcity conditions. A large number of people were employed under the project. A minimum wage of Rs. 7 per day was fixed under the Minimum Wages Act. But the department also fixed a particular quantity of work per person to be eligible for the minimum wages. This was challenged by a social action group called the Social Work and Research

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22. Judges: P.N. Bhagwati and R.S. Pathak.
AIR 1983 SC 328; (1983)1 SCC 526

Centre. They filed the PIL alleging violation of the labour welfare law, citing the Asiad case.

Ruling: The court held that every person who provided labour or service to another was entitled at the least to the minimum wage and if anything less than the minimum wage was paid to him, he could complain of violation of his fundamental right under Article 23 and ask the court to direct payment of the minimum wage to him so that the breach of Article 23 may be abated. The notification issued under the Minimum Wages Act, fixing the minimum wage at Rs 7 per day for workmen employed in the construction work does not empower the employer to fix any particular norm of work to be carried out by the workman with reference to which the minimum wage shall be paid by the employer. The minimum wage is not fixed on piece-rate basis, and so a stipulation that a particular minimum wage would be payable only if a certain amount of work is turned out by the workman and if he turns out less work, then the minimum wage payable would be proportionately reduced cannot be sustained. The employer may fix any reasonable norm specifying the quantity of work which must be turned out by the workman during the day, but if the workman does not turn out work in conformity with such norm, the employer may take disciplinary action against the workman and dismiss him, but cannot pay him anything less than the minimum wage.

The Exemption Act insofar as it excludes the applicability of the Minimum Wages Act, 1948 to workmen employed on famine relief work and permits payment of less than the minimum wage to such workmen, must be held to be invalid as offending the provisions of Article 23. It must be presumed that the work undertaken by the state by way of famine relief is useful to society and productive in terms of creation of some asset or wealth and when the state exacts labour or service from the affected persons for carrying out such work, there can be no justification for the state not to pay them the minimum wages.

23. ILL-TREATMENT OF WOMEN BY POLICE

Sheela Barse vs. State of Maharashtra

This case deals with torture and ill-treatment of women suspects in police lock-ups. Several directions were passed to provide safety and security in police lock-ups.

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23. Judges: P.N. Bhagwati, R.S. Pathak and A.N. Sen.
(1983)2 SCC 96.

Facts: This writ petition was based on a letter written by a journalist, Sheela Barse, to the court complaining of violence against women prisoners confined to police lock-ups in Bombay. Barse stated that she had interviewed 15 women prisoners in the Bombay central jail with the permission of the I.G. of Prisons. Five of them told her that they had been assaulted by the police in the lock-up. As the court believed that the journalist would not have fabricated the interviews, her letter was treated as a writ petition and the court issued notices to the state government, the I.G. of Prisons and some other authorities.

They did not reply to the notice on the next date of hearing. So the court adjourned the hearing. But at the same time, it directed the director of the College of Social Work, Bombay, to visit the central jail and interview the women prisoners there to ascertain the allegations of the journalist. The prison authorities were asked to allow her to conduct the interviews without anyone else being present. The report thus made revealed much more than what was alleged. The court described it as a "highly interesting and instructive socio-legal document which provides an insight into the problems and difficulties facing women prisoners." Since the petition concerned only with the safety of the prisoners, the court did not go into all the aspects described in the report except strongly recommending the report for a reading by the authorities concerned.

Ruling: The judgement consisted of two broad parts. The first one dealt with the provision of free legal aid to the women. The court recalled the earlier judgements in which legal aid has been made into a basic right of all those in custody. Therefore, the court asked the Superintendent of Police to send a list of all undertrial prisoners to the local legal aid committee with details of the offences charged with. He was also directed to give all facilities to the lawyers nominated by the district legal aid committees to deal with their cases. The jail authorities were asked to publicise the legal aid facilities made available to them within the jail.

The second part of the judgement dealt with the safety of the women prisoners. The court passed several directions.

Among them: Set up a few lock-ups specially for women in reasonably good localities; women constables to guard them; interrogation of women should be done only before female police officers; whenever a woman is taken to police lock-up the nearest legal aid committee should be informed; and a sessions judge should make periodic surprise visits to the lock-ups to meet the prisoners.

24. JUDGES RAISE DOUBTS OVER PIL

Sudipt Mazumdar vs. State of M.P.

In this case two judges raised several questions about the practice of letters being turned into public interest writ petitions. The doubts, raised in November 1982, have not yet been answered by the court, and probably would never be. But this order of the court is an example of the reaction which can set in if one section of the judiciary is too activist and another not yet ready to go along with it as fast. It may be noted that several jurists were also critical of the activist pace of the Supreme Court during this period. There were fears of opening floodgates of litigation if letters were turned into writ petitions by the Supreme Court and the high courts. This case is quoted here mainly to highlight the hurdles that can arise in conducting public interest litigation.

Facts: The petitioner was at that time a reporter of the *Indian Express*. He visited certain villages near the firing ranges of the army in M.P. and found that the tribals in those areas were facing danger to their lives and liberty because of the army's callousness. Some of the ammunition used for practice were left at the firing ranges, a few of them unexploded. Poor tribals, women and children among them, used to pick the shells to sell them as scrap in the market. In this pursuit of making a living, several of them were killed when the shells exploded. It was said that there was one "village of widows" where all able-bodied men had been killed in the process. The petitioner reported all these in the newspaper. Then he sent the writings to the Supreme Court in the hope that it will take up the matter as a public interest case, as it had done in several other cases. But when it was listed before this bench, the result was unexpected. The judges brought a typed sheet raising ten questions regarding the conduct of letter-petitions and referred them all to a constitution bench for consideration. Dr. L.M. Singhvi, senior counsel, was appointed *amicus curiae*, the lawyer to assist the court.

Fortunately for the tribals, their problems were separated from the constitutional questions and decided by other benches over a period of years. The army was asked to cordon off the firing ranges to prevent the tribals from entering and picking scraps.

Questions: Though the ten questions raised by the two judges sounded very important in the early eighties, they are not quite relevant now, as the

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24. Judges: S. Murtaza Fazal Ali and E.S. Venkataramaiah.
(1983)2 SCC 258.

law has since been clarified by the court itself as we shall see in later judgements. Only a sample few questions are summarised below:

- Should the court take notice of letters addressed to individuals (instead of the court) by post enclosing some paper cuttings and take action except where the complaint refers to deprivation of liberty of any individual?
- Should such letters be sent to the court's legal aid committee by the registrar with a request to examine whether there is any prima facie case which requires to be considered by this court, and if it is felt that there is such a case, to file a formal petition?
- Can a stranger to a cause, be he a journalist, social worker, advocate or an association, initiate action in matters alleged to be involving public interest or should a petitioner have some interest in common with others whose rights are infringed by some government action or inaction?
- Can this court take action on letters for which remedy can be had in ordinary civil, criminal or revenue courts?
- Would the informality (of turning letters into petitions) not lead to greater identification of the court with the cause than it would be when a case involving the same type of case is filed in the normal way?

25. ABOMINABLE STORY OF A PROTECTIVE HOME

Upendra Baxi vs. State of U.P.

In this case, the Supreme Court passed several orders over a period of years, improving the conditions of the inmates of the protective home for women in Agra. The court invoked Article 21 of the Constitution (life and liberty) and the U.P. Suppression of Immoral Traffic in Women and Girls Rules directing the authorities to discharge their duties under the law. It does not lay down any new law, but it is another significant instance in which the court passed specific orders in individual cases of the aggrieved women. It even went to the extent of ordering the authorities to provide a specific number of toilets, water taps, fans, radio and other amenities.

Facts: It started with a letter to the editor written by a local doctor, appearing in the *Indian Express* about the inhuman conditions prevailing in

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25. Judges: P.N. Bhagwati and O. Chinnappa Reddy.
(1983)2 SCC 308.

the Agra home. This letter was sent to the Supreme Court with a covering letter by two law professors of Delhi University, Upendra Baxi and Lotika Sarkar. It was turned into a writ petition by the court and several orders were passed. The U.P. Government vehemently resisted this sort of litigation in the beginning. The superintendent of the home alleged that it was a conspiracy hatched by the professors "to compel the government to leave the present accommodation." The court strongly condemned this allegation of collusion between the professors in Delhi and the landlord in Agra. This is an extreme example in which a state government alleged malafides against petitioners in a public interest litigation. This happened at a time when this litigation was in its initial stages and many authorities could not imagine that courts could intervene in the running of institutions invoking the right to dignified life. Such resistance is now rare and these days, the governments normally take a cooperative stance, instead of the adversary posture.

Ruling: The ruling refers only to the inmates and their conditions in the protective home. It has no general application. Therefore, only a few points which can be followed in such situations are summarised here.

Firstly, a judicial magistrate was directed to inquire into the allegations to verify them. He reported to the court on the various aspects of the home and its inmates and confirmed the subhuman situation obtaining there. Secondly, the court asked a panel of doctors to visit the home and check the state of health of the women lodged there. It was found that 50 of them were suffering from TB, many others from mental retardation, disorders and serious contagious diseases. The court asked the superintendent of the home to state whether the inmates were ever medically examined and any treatment given. Thirdly, the superintendent was asked to state whether the provisions of the U.P. Suppression of Immoral Traffic in Women and Girls were followed when they were admitted, till they left the place. The court collected a mass of material regarding the oppressive conditions in the home (e.g. they were kept in two underground cellars) and passed several orders to correct them. It asked the authorities to provide sufficient number of latrines and bathrooms, draw up a scheme for vocational training and rehabilitation, and reconstitute the board of visitors whose term had expired long ago. There were many minor girls who were kept in the company of hardened prostitutes who have been rescued from brothels and also women suffering from diseases. They were ordered to be kept separately. These and several other orders in this case, continuously monitoring the progress of the implementation of the court directions, may be studied in greater detail by social workers who specialise in this area.

26. CHILDREN SHUT IN JAIL FOR YEARS

Kadra Pahadiya vs. State of Bihar

This case is similar to those on Bihar undertrials (Hussainara Khatoon cases, described earlier), except that this one is about young children kept in jail for years. The law had already been laid down in the Hussainara Khatoon cases. Therefore, it was merely applied in this instance.

Facts: A social scientist, Vasudha Dhagamwar, working in Bihar at that time, wrote a letter in 1980 to the Supreme Court alleging that Kadra Pahadiya and three other boys aged between 9 and 11, and belonging to a backward tribe were in jail for eight years without trial. They were kept in leg-irons meant for hardened criminals and forced to work outside the jail. The letter was treated as a writ petition. Before this order was passed, the boys were released by the authorities. Therefore, further orders were not necessary. But the court took this opportunity to reassess the impact of its earlier orders in the Hussainara Khatoon cases. It found that 18,133 cases were pending in different sessions courts in which trial had not started even 12 months after commitment. The number of prisoners awaiting inquiry and trial was much more. The court asked the petitioner's lawyer to classify the data supplied by the government and the courts. The court then passed orders speeding up the trial and giving free legal aid to the needy prisoners.

Ruling: This order reiterated the principles laid down in Hussainara Khatoon cases that speedy trial is a fundamental right of all prisoners, bail should be granted in deserving cases, and legal aid should be provided wherever necessary. The court also sought from the government data regarding the number of judges in each district of Bihar and how many cases were pending before them. It also asked the Patna High Court to say whether it had fixed any norms for disposal of cases. The High Court was further asked to state whether more judges were required to be appointed. Using this information, the Supreme Court later requested the government to appoint sufficient number of judges in the state.

It may be noted that orders of this nature are very extraordinary as the Supreme Court normally does not interfere with the structure of the district judiciary. It is for the state governments and the high courts to appoint sufficient number of judges and lay down norms of disposal. The order in the Kadra Pahadiya case has not been followed as a precedent in any other case. This order was delivered when public interest cases were at its peak in

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26. Judges: P.N. Bhagwati and V.B. Eradi.
AIR 1982 SC 1167; (1983)2 SCC 104.

the Supreme Court and there were activist judges on the bench. Normally courts would be reluctant to go this extent.

27. WHEN LABOUR LAWS ARE FLOUTED

Labourers of Salal Hydro Project vs. State of Jammu and Kashmir

This is a judgement which followed the Asian Games case discussed earlier (20). In this case, the court directed the authorities to ensure the enforcement of the various labour laws covering the construction workers. The legal principles have already been discussed in the Asian Games case. Those principles were applied in the situation obtaining in the Salal Construction Project.

Facts: *The Indian Express* carried a report in 1982 that a large number of migrant workmen from different states were working in the hydroelectric project in difficult conditions and they were exploited by the contractors who denied them the benefits of the various labour laws. The People's Union for Democratic Rights thereupon sent a letter to the court, which turned it into a writ petition. The government and the labour commissioners of the concerned states were treated as respondents. The court also asked the labour commissioner of Jammu to visit the project site and ascertain the situation there–whether there were bonded and migrant labourers there, their living and working conditions. His report confirmed the allegations and therefore the court passed several directions to the Centre and the state government.

Ruling: The judgement aimed at the enforcement of laws, especially the provisions of the Contract Labour (Regulation and Abolition) Act, the Minimum Wages Act, Employment of Children Act and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act. For instance, it was directed that payment of wages, including overtime wages, must be made directly to the workers in full except with authorised statutory deductions. Payment through middlemen, after deducting advances repayable by workers to such middlemen or any messing charges were held improper. The full wages must be paid first, and then the dues could be recovered. The court asked senior officers to inspect at intervals to ensure that the rules were followed. Every payment of wages should be made directly to the worker without deductions, in the presence of an officer of the power corporation or the government. The workers should be asked whether they were getting the full payment.

27. Judges: P.N. Bhagwati, R.S. Pathak and A.N. Sen. (1983)2 SCC 181.

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These directions show how the court can monitor the implementation of labour and welfare laws through public interest litigation, though normally it is not bound to undertake such a laborious task. It is entirely up to the judge's conscience to launch upon such social action.

In continuation of this case, the court further ordered [(1984)3 SCC 538] the tightening up of the inspection machinery to avoid recurrence of violation of labour laws. With that order the case was disposed of.

28. SAFETY DEVICES FOR THRESHERS

Balwant Singh vs. Mahmood

Many farm workers used to lose their limbs while operating power threshers as these equipment did not have safety devices. Being illiterate farm hands employed seasonally, they not only did not get compensation from their masters, but became unemployable for life due to their physical handicap. The Supreme Court turned one such case, which came to it by way of appeal from the Allahabad High Court, into a PIL to pass several interim orders to the U.P. and Central Governments.

Ruling: The Supreme Court, in its final order expressed satisfaction over the fact that in response to its orders, the Central Government issued an order under the Essential Commodities Act for regulating the manufacture, storage and sale of power threshers. Now the threshers must have proper safety devices. The Government also promised to introduce central legislation regarding this.

The U.P. Government also issued a quality control order for threshers in response to the court orders. According to it, no thresher can be used without meeting the ISI standards for it. The court requested the Government to arrange loans for enabling owners of the threshers to fit safety devices.

29. COMPENSATION FOR ILLEGAL CUSTODY

Rudal Sah vs. State of Bihar

This is a significant case in that the Supreme Court awarded compensation to a person detained illegally in jail for many years. Before this

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28. Judges: P.N. Bhagwati and E.S. Venkataramaiah.
(1983)2 SCC 264.

29. Judges: Y.V. Chandrachud, A.N. Sen and R.N. Misra.
AIR 1983 SC 1086; (1983)4 SCC 141.

uling, the libaility of the state to compensate for the wrongs of its servants vas almost non-existent. Thus, this case became a turning point in the law f state liability and is often quoted in several later cases. The law was fully eveloped in *Nilabati Behera vs. State of Orissa* in 1993.

Facts: Though this case was filed as a habeas corpus petition in the ame of the detainee, this was in fact a PIL, one of the spinoffs of the earlier ndertrial cases from Bihar. The plight of Rudal Sah would not have been iscovered but for the light thrown into the Bihar jails by the PIL movement n the Supreme Court. Though Sah was ordered to be released from jail by a essions court in 1968, he was detained for 14 more years in jail. The overnment submitted that he was of unsound mind at the time of the release rder, but in 1977 he was medically certified as normal. In any case, he anguished in jail due to negligence of the state authorities and was released nly when the petition was filed in the Supreme Court in 1982.

Sah claimed compensation for his illegal detention, medical treatment t government expense and ex gratia payment for his rehabilitation.

Ruling: The cooperation of the state government in the conduct of this ase was scanty. It could not provide the basis on which Sah was claimed to e insane. The court remarked that the alleged insanity might have been rovoked by a sense of helplessness and persistent despondency. Since this s a far-reaching judgement, important paragraphs are reproduced below:

The concerned department of the Government of Bihar could have fforded to show a little more courtesy to this court and to display a greater wareness of its responsibilities by asking one of its senior officers to file an ffidavit in order to explain the callousness which pervades this case. nstead, the jailor has been made a scapegoat to own up vicariously the dereliction of duty on the part of the higher officers who ought to have known better. This is not an isolated case of its kind and we feel concerned hat there is darkness all around in the prison administration of the State of Bihar. The Bhagalpur blindings should have opened the eyes of the prison dministration of the state. But that bizarre episode has taught no lesson and as failed to evoke any response in the Augean Stables. Perhaps, a Hercules as to be found who will clean them by diverting two rivers through them, ot the holy Ganga though. We hope (and pray) that the higher officials of he state will find time to devote their personal attention to the breakdown of rison administration in the state and rectify the grave injustice which is eing perpetrated on helpless persons. The High Court of Patna should itself xamine this matter and call for statistical data from the Home Department

of the Government of Bihar on the question of unlawful detentions in the state jails. A tabular statement from each jail should be called for, disclosing how many convicts have been in jail for more than 10 years, 12 years, 14 years and for over 16 years. The high court will then be in a position to release prisoners who are in unlawful detention in the jails and to ask the state government to take steps for their rehabilitation by payment of adequate compensation wherever necessary.

That takes us to the question as to how the grave injustice which has been perpetrated upon the petitioner can be rectified, insofar as it lies within our power to do in the exercise of our writ jurisdiction under Article 32 of the Constitution. That Article confers power on the Supreme Court to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by Part III. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by Part III is "guaranteed," that is to say, the right to move the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is itself a fundamental right.

It is true that Article 32 cannot be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary processes of courts, civil and criminal. A money claim has therefore to be agitated in and adjudicated upon in a suit instituted in a court of the lowest grade competent to try it. But the important question for our consideration is whether in the exercise of its jurisdiction under Article 32, this court can pass an order for the payment of money if such an order is in the nature of compensation consequential upon the deprivation of a fundamnetal right. The instant case is illustrative of such cases. The petitioner was detained illegally in the prison for over 14 years after his acquittal in a full-dressed trial. He filed a habeas corpus petition in this court for his release from illegal detention. He obtained that relief, our finding being that his detention in the prison after his acquittal was wholly unjustified. He contends that he is entitled to be compensated for his illegal detention and that we ought to pass an appropriate order for the payment of compensation in this habeas corpus petition itself.

We cannot resist this argument. We see no effective answer to it save the stale and sterile objection that the petitioner may, if so advised, file a suit to recover damages from the state government. Happily, the State's counsel has not raised that objection. The petitioner could have been relegated to the

ordinary remedy of a suit if his claim to compensation was factually controversial, in the sense that a civil court may or may not have upheld his claim. But we have no doubt that if the petitioner files a suit to recover damages for his illegal detention, a decree for damages would have to be passed in that suit, though it is not possible to predicate, in the absence of evidence, the precise amount which would be decreed in his favour.

In these circumstances, the refusal of this court to pass an order of compensation in favour of the petitioner will be doing mere lip-service to his fundamental right to liberty which the state government has so grossly violated. Article 21 which guarantees the right to life and liberty will be denuded of its significant content if the power of this court were limited to passing orders of release from illegal detention. One of the telling ways in which the violation of that right can reasonably be prevented and due compliance with the mandate of Article 21 secured, is to mulct its violators in the payment of monetary compensation. Administrative sclerosis leading to flagrant infringements of fundamental rights cannot be corrected by any other method open to the judiciary to adopt. The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the state as a shield. If civilisation is not to perish in this country as it has perished in some others too well-known to suffer mention, it is necessary to educate ourselves into accepting that, respect for the rights of individuals is the true bastion of democracy. Therefore, the state must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers.

Taking into consideration the great harm done to the petitioner by the Government of Bihar, we are of the opinion that, as an interim measure, the state must pay to the petitioner a further sum of Rs. 30,000 in addition to the sum of Rs. 5,000 already paid by it. The amount shall be paid within two weeks from today. The Government of Bihar agrees to make the payment though, we must clarify, our order is not based on their consent.

This order will not preclude the petitioner from bringing a suit to recover appropriate damages from the state and its erring officials. The order of compensation passed by us is, as we said above, in the nature of a palliative. We cannot leave the petitioner penniless until the end of his suit, the many appeals and the execution proceedings. A full-dressed debate on the nice points of fact and law which takes place leisurely in compensation suits will have to await the filing of such a suit by the poor Rudal Sah. The Leviathan will have liberty to raise those points in that suit. Until then, we hope, there will be no more Rudal Sahs in Bihar or elsewhere.

30. COMPENSATION FOR MISSING MEN

Sebastian Hongray vs. Union of India

This is an important judgement in which the Supreme Court awarded compensation to two widows whose husbands were detained by the army and were not heard of since then. It was a habeas corpus petition, but the court went out of its way to award compensation also in that petition. Till this judgement, the state had claimed that it was not bound to pay compensation to victims of policemen, the military personnel and other servants of the government. The state had consistently claimed "sovereign immunity" from such liability in similar cases. But this judgement gave a rude shock to that theory. This has been quoted in several later cases where compensation was sought for death and torture in detention, with varied success. The principle was fully developed in 1993 in *Nilabati Behera vs. State of Orissa.*

Facts: The petition was moved by a Naga student studying in Delhi He moved the habeas corpus writ petition against the Union Government, the Manipur Government and the 21st Sikh Regiment seeking the production of two "missing" men, one a village school teacher, and another, an assistant pastor. These two were allegedly whisked away by the officer in charge of the regiment and not released since then. The petition described the atrocities of the soldiers, but for the purpose of this case, the fate of only the two men need be followed. The officers perhaps wanted the two men, Daniel and Paul, to sign a statement that they had not committed atrocities on the villagers. So they were taken to a distant camp. When they did not return, the village leaders tried to trace their whereabouts, but it was in vain. Though the army claimed that Daniel and Paul were released, the villagers denied this. Then this petition was moved in the Supreme Court. The judgement describes the steps taken by the court to get information about the two men. After a number of hearings, it was clear that the authorities could not produce the two missing men. The statements of the authorities were found to be full of faults. At the last hearing, on 23/4/1984 (AIR 1984 SC 1026), the court stated in its order that "there has been a failure to produce the missing persons in respect of whom the writ is issued."

Ruling: The authorities were unable to produce the missing men despite the court order to do so. The court rejected their statement that they had been left free as "untenable and incorrect." It said that there is "wilful disobedience to the writ of habeas corpus by misleading the court by presenting a distorted version of facts." This was contempt of court for

30. Judges: D.A. Desai and O. Chinnappa Reddy.
AIR 1984 SC 571; (1984)1 SCC 339.

which punishment was imprisonment as well as fine. In this case, the court did not impose either.

"Keeping in view the torture, the agony and mental oppression" suffered by the two wives, the court directed the Union and State governments to pay them Rs. 1 lakh each "as a measure of exemplary cost as is permissible in such cases."

The court further concluded that the two men might have been murdered. Therefore, it directed the court registrar to send all the case papers to the police in Manipur to treat them as a first information report and to start investigation to find out who are the culprits.

31. MILITANTS IN PLACES OF WORSHIP

Hindustan Andolan vs. State of Punjab

If criminals or terrorists hide in places of worship, should the police enter and arrest them? Such situation may create very difficult situation for the government as religion, communal politics and law and order have become increasingly interconnected. The courts would rather stay away from such hot spots.

Facts: At the peak of militant activities in Punjab, it was believed that many extremists took shelter in their places of worship and stored arms and ammunition, using those places as vantage points for their activities. Hindustan Andolan, a public interest organisation, moved a PIL in the Supreme Court challenging the government's policy not to send police to places of worship.

Ruling: The court dismissed the petition with a small but significant order. It said it could not pass general orders on this question and it was for the executive arm of the government to take appropriate action. The order said:

The question raised in this petition is whether the government can ask the police not to enter a place of worship, even if criminals are reported to be hiding or harboured therein. It is impossible and undesriable for any court to issue a general writ of mandamus to the effect that whenever a criminal is suspected to have taken shelter in a place of worship, the police must enter that place, regardless of the overall situation of law and order. Speaking generally, courts cannot enforce law and order by issuing general directions

without reference to specific instances. The government has to assess, in the context of the prevailing conditions, the impact of the steps taken to enforce law and order. And, it is the executive which has to take a policy decision as regards the steps to be taken in a given situation, after taking into account the demands of the prevailing situation.

We do not commend or suggest that the police should be silent spectators to wanton destruction of life but we cannot, as men of some little experience of law and life, commend that the police must enter places of worship forcibly. While enforcing law and order, the executive cannot be oblivious of the possibility that while solving one problem of law and order, others more acute than the one sought to be solved may arise. That is always a valid and relevant consideration.

32. CORRUPTION CHARGES AGAINST POLITICIANS

R.S. Nayak vs. A.R. Antulay

Though this is strictly not a PIL, it has high public interest content as it dealt with corruption charges against a Chief Minister. The case was a prolonged one, with the Supreme Court dealing with it several times in between the proceedings in the special court and the Bombay High Court. Even after ten years of legal battle, it was still hanging in balance. Though the several judgements deal with a variety of criminal law points, only the basic point touching upon PIL is dealt with below.

Facts: The former Chief Minister of Maharashtra, Mr. A.R. Antulay, was accused of corruption, conspiracy, cheating and a number of other offences by a section of the press. Taking off on these reports, two political opponents of the Congress Chief Minster filed private criminal complaints against him in the Bombay metropolitan magistrate's court. It was dismissed as the Governor's sanction was necessary to prosecute a Chief Minister, who is a public servant. Later, Mr. Antulay resigned and became an MLA. The Governor meanwhile accorded sanction to prosecute him. The political opponents moved again, and Mr. Antulay argued that an MLA was a public servant and therefore the sanction of the legislative assembly was necessary. The Supreme Court held that an MLA is not a public servant and his trial should go on. There are some half a dozen Supreme Court

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31. Judges: Y.V. Chandrachud, A.N. Sen and M.P. Thakkar.
AIR 1984 SC 822; (1984)1 SCC 204.

32. Judges: D.A. Desai, R.S. Pathak, O. Chinnappa Reddy, A.P. Sen and V.B. Eradi.
AIR 1984 SC 684; (1984)2 SCC 183, 500.

judgements in the Antulay cases, including those of constitution benches, but they too deal with a spectrum of criminal and constitutional matters not directly related to PIL.

33. PLEA FOR MINIMUM WAGE

Ram Kumar Misra vs. State of Bihar

The question was whether the ferry workers were being paid minimum wage, whether they were entitled to it and whether they were working as bonded labourers. The letter-petition occasioned an enquiry by a court-appointed commission and the workers were held to be entitled to minimum wage.

Facts: The case was initiated through a letter written by Ram Kumar Misra, President of the Free Legal Aid Committee of Bhagalpur. The letter complained that the workers employed in two ferries were not being paid wages under the Minimum Wages Act. The letter contained a chart showing what was being paid and what should have been paid. The letter was treated as a writ petition and both parties were issued notice. The district magistrate and the petitioner were directed to enquire into the allegations made in the petition to see whether there was prima facie case to proceed further. Their report stated that the workers were covered by the Minimum Wages Act. The complaint that they were bonded labourers was not found correct.

Ruling: The court decided only the question whether the workers were covered by the Act. It did not go into the other allegations and statements in the report. The court held that the workers were entitled to the minimum wages. The employers had also contended that they were paying the prescribed wages, which was disputed. The court therefore, asked the labour commissioner to tell Misra which was the authority which would decide on the disputes over wages. That authority would take steps, including giving wide publicity, to invite the workers to file claims for arrears of minimum wages. The petitioner was also allowed to file such claims on behalf of the workers. The authority would hear both sides and decide the case of each worker in six months. The payments if any should be made within a month thereafter. As the petitioner had come to the Supreme Court for vindicating the rights of the poor workers, it asked the state government to pay him Rs.2,000 for his expenses.

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33. Judges: P.N. Bhagwati, A.N. Sen and R.N. Misra.
AIR 1984 SC 537.

34. FREEDOM FOR BONDED LABOURERS

Bandhua Mukti Morcha vs. Union of India

This case refers to the bonded labour system prevailing in several parts of the country. Though the Bonded Labour System (Abolition) Act was passed in 1976, the social evil thrived. In this judgement, the court passed several directions in the cases of certain mines in Haryana to identify, free and rehabilitate bonded labourers working there. This judgement also reiterated the role of public interest litigation. Another important issue dealt with here is the court's power to appoint commissions to study the facts and report to the court. The practice of appointing commissions to visit places where the fundamental rights are allegedly being violated and give the details to the court was justified.

Facts: Bandhua Mukti Morcha is an organisation working for the release of bonded labourers. Under the banned system of bonded labour, a person is given a loan by a rich person. In repayment of this loan, the labourer has to work for the creditor. But the interest charged is so exploitative that the worker is often unable to repay even the interest during his lifetime. Thus his family and children are also caught in the vicious circle and live in slavery. The petitioner organisation conducted a survey of the stone quarries in Faridabad district of Haryana as a test case and found that there were large numbers of labourers from Maharashtra, M.P., U.P., and Rajasthan who were working as bonded labourers. The survey report was sent to the court with a letter alleging that their fundamental rights were being violated by the labour contractors, quarry owners and the state. This letter was treated as a writ petition and thus the court started a series of cases relating to bonded labour. Several cases came to the court later, but this is the main judgement on this issue.

Ruling: Several issues were raised in this case. The state raised a preliminary objection that no fundamental right of the workmen was violated and therefore there cannot be a writ petition. The Bonded Labour Abolition Act deals with the evil and therefore a writ petition in the Supreme Court would not lie. The court rejected this argument and expressed surprise at the government's stand. The government should not have tried to stall an inquiry by the court at the threshold itself, and should have welcomed the probe. When such a public interest petition was brought forward, the government should try to satisfy the court that there was no violation. instead of taking an adversary posture.

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34. Judges: P.N. Bhagwati, R.S. Pathak and A.N. Sen.
AIR 1984 SC 802; (1984)3 SCC 161.

The court emphasised that when the allegations showed that the workers were being held in bondage without basic amenities like shelter, drinking water or two square meals a day, the court could not ignore them and maintain that there was no violation of fundamental rights. The judgement quoted an earlier ruling {*Francis Coralie Mullin vs. Administrator, Delhi*, (1981)1 SCC 608} in which the court had held that everyone in this country has a right to live with dignity, free from exploitation.

The next objection raised by the government was that the court had no power to appoint commissions and therefore their reports had no value as evidence. This was also rejected after an elaborate discussion on the procedures of the court in a writ petition. Briefly stated, the court ruled that its power under Article 32 (writ petitions) is very wide and it can adopt any "appropriate" proceeding. The power conferred on the Supreme Court under Article 32(2) is in the widest terms. It has discretion to evolve a procedure "appropriate" in the circumstances in a given case to enable it to exercise its power.

The court further clarified that the principle was applicable not only to the Supreme Court under Article 32, but also to all the high courts under Article 226. The language of the two articles are similar. "The same power can and must therefore be exercised by the high courts," the judgement stressed. In fact, the Supreme Court explained, the jurisdiction of the high courts is much wider, because the high courts are required to exercise this jurisdiction not only for enforcement of a fundamental right but also for enforcement of any legal right. There are many rights conferred on the poor and the disadvantaged (not being fundamental rights) which are the creation of other legislations and they need to be enforced as vigorously as the fundamental rights, the Supreme Court underlined.

The judgement also carries long passages on the reason for the establishment of public interest litigation. This reiteration was needed at that time when there were several objections to the court's activist stand.

Later the judgement deals with the several laws protecting the workers, like the Bonded Labour Abolition Act, the Mines Act, the Inter-State Migrant Workmen Act and the Contract Labour (Regulation and Abolition) Act. The court ruled that the government must ensure that the benefits of these laws are given to the labourers. These laws deal with the basic amenities to the workers, payment of wages and other benefits to the labourers.

The Supreme Court applied these laws to the labourers in the Faridabad quarries and passed 21 specific directions to the authorities. These directions are very elaborate, and those who work in this field may read them in full to adapt them to the local needs. They may be quoted in the high courts as precedents. The judgement also gives a model of assignments for a commission of the court working in this area. He was asked, for example, to see how far have the directions of the court been followed by the government. This monitoring by the court ensured that most directions were enforced by the government at least for some time. The court also monitored the rehabilitation of the bonded labourers through such procedure.

But the petitioner organisation was so disappointed by the attitude of the authorities that after several years of contempt of court petitions and rallies, it burnt the copy of the judgement in public.

Further orders were passed (AIR 1992 SC 38) after reports from more commissions to study the implementation of the 21 directions of the Supreme Court. The case came to a close with the following observations and directions:

The State of Haryana, we must say, has not taken our intervention in the proper spirit and has failed to exercise appropriate control though some eight years back this court had in clear terms laid down the guidelines and had called upon the public authority to take charge of the situation and provide adequate safeguards.

The operation of stone quarries is more or less concentrated in particular areas. That is a feature which facilitates control. If a local officer of appropriate status had been placed around the corner it would have helped in improving the lot of the workmen. If the pollution authority had been made to visit the area at repeated intervals pollution control could have been imposed. If some authority entrusted with welfare had been made to inspect this area at regular intervals he could have ensured availability of facilities for schooling and hospital as also supply of drinking water to the workmen. It is a hot belt and for over 4 to 5 months water scarcity is there in this area. The workmen's job is such that they are exposed to the summer heat. It is the obligation of the employer, therefore, to provide a definite source of water.

The workmen are engaged almost on full-time basis. As the report indicates, the bulk of the workmen are not prepared to return to their states. What is necessary, therefore, is provision of a permanent base for residence at or near the work site. This would necessitate reasonable housing, supply

of water, a reasonable provision store at hand, schooling facility, facility of a hospital, recreational facilities and attention to the law and order problem. Perhaps near the area a police station or an outpost could be located. If the workers are insufficient in number, a doctor could be taken as a visitor to the area at frequent intervals and instead of a regular school one single teacher could be provided to look after the health of the people.

The court's judgement to regulate such matters has inherent limitation. These are not schemes which could be conveniently monitored by a court—far less can the apex court keep track of the matter. Its registry has congestion. To get attention for a matter of this type from the court is bound to take some time. Human problems in their normal way do not wait for a time schedule for attention. In such circumstances, it should be the obligation of the state which on account of running stone quarries within its area must in various ways be getting benefits to look after these aspects. As a welfare state it is now the obligation of the State of Haryana to cater to these requirements of the area. Haryana as we find has made substantial advances compared to many other states of the country and there is some amount of welcome consciousness in the administration of the state. We hope and trust that if a direction is issued to the chief secretary of the State to regulate these aspects the reposing of trust by this court would not turn out to be misplaced.

In these circumstances we call upon the State of Haryana to attend to the needs referred to above of the workmen in a well-considered and systematic way. Since those workmen who will be working there have to be protected from the vagaries of employment and the anxiety of the employer to draw work without adequate payments, the authorities of the State of Haryana must take care to protect the workmen from the hands of the employer by ensuring compliance with the laws and if there be any vacuum in the laws, the State of Haryana should rise to play the role of a welfare state and play it well. In fact there could be a special cess raised against the quarry activities to be specifically utilised by way of return to the industry and there could be a special fund out of which all the amenities referred to above could be provided. What is wanting is not power but the mind and alertness regarding one's duty.

If our directions are worked out there would really be no bonded condition and the workmen would be paid their due share against employment and with the facilities ensured they can live well in the area.

At the point of enforcement of the directions as indicated above if anyone turns out to be bonded and is freed and is also prepared to return to

his state, the scheme framed by the Government of India would be applicable to such person.

We, therefore, dispose of this petition by directing that the State of Haryana shall now ensure that the people who have been identified numbering about 2,000 are continued in work with the improved conditions of service and facilities as referred to above and such of them who want to go back to their native areas be treated as released from bondage and appropriate action must be taken in accordance with Government of India's scheme forthwith.

35. REHABILITATION OF FREED LABOURERS

Neeraja Chaudhary vs. State of M.P.

This case, referring to the bonded labour, dealt with the problem of their rehabilitation after freeing them from slavery. In many cases, after their release, they turned destitutes or were forced to go back to their old masters for livelihood.

Facts: The writ petition arose from a letter written by the petitioner, a journalist working in Delhi, to the Supreme Court. She said that after the court released 135 workers from the Haryana quarries, they were sent back to their villages in M.P. Despite the chief minister's promise to rehabilitate them, nothing was done for six months. Thus they were living in a new bondage, namely, bondage to starvation.

Ruling: The judgement emphasised the need for rehabilitation. It reiterated that any failure on the part of the government to implement the law abolishing bonded labour would amount to violation of Article 21, which guarantees the fundamental right to a dignified life.

It also emphasised that whenever it is found that a person is forced to work for no wages or nominal wages, the presumption would be that he is a bonded labourer, unless the employer or the government can rebut it.

The court named certain social activists as members of the vigilance committees constituted under the Bonded Labour Abolition Act, so that they may be more effective in identification and rehabilitation of bonded labour. If these new members point out existence of bonded labour, the collector or other authorities must take immediate action. A survey should also be made of the regions which are affected by the bonded labour system.

35. Judges: P.N. Bhagwati and A.N. Sen.
AIR 1984 SC 1099; (1984)3 SCC 243.

While directing the government to rehabilitate the bonded labourers involved in this case, the court stated that the kind of rehabilitative assistance would have to be decided by the vigilance committees. Such assistance shall be provided by the state government in the presence of a representative of the social action groups. The government was asked to file a report to the court on how it complied with the order.

Another case of this type may be briefly referred to here. This was a case filed by Bandhua Mukti Morcha against the Tamil Nadu government, referring to the bonded labour rehabilitation problem there.

Following the writ petition, the state government came forward with a scheme for rehabilitation of 157 bonded families in Kodaikanal Hills. The court asked the government to implement the scheme, adopting the suggestions of the petitioner {1986(Suppl) SCC 541}.

Yet another case of this kind is Santhal Pargana Antyodaya Ashram vs. State of Bihar 1987 (Suppl) SCC 141. In this the court appointed a committee to identify bonded labour. After receiving its report, the court gave directions regarding their release and rehabilitation.

36. SPEEDIER JUSTICE FROM HIGH COURTS

In re Nawal Thakur, Convict in Kulu Jail

Following wide publicity to the PIL movement in the Supreme Court, thousands of complaints poured in. Some judges felt that the high courts should also share the PIL dockets as they also had equal jurisdiction in these matters. In this case, the Supreme Court judge forwards a letter received from a detenu in the Kulu jail to the High Court of Himachal Pradesh for appropriate action.

Ruling: The short order read as follows:

This court has been receiving a large number of letters, telegrams etc. from persons residing in different parts of the country seeking relief regarding many matters. It may not be possible for this court to take action on every one of them. Many times the parties may not be able to come to this court from distant places to prosecute the cases. In some cases the high courts having jurisdiction may be able to deal with the matters more effectively as courts of first instance than this court. Hence I feel that it is desirable that in all such cases where it is not possible for this court itself to

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36. Judge: E.S. Venkataramaiah.
(1984)3 SCC 572.

take action and it is felt that the high court can deal with them effectively, this court should forward the letter, telegram etc. to the high court having jurisdiction over the matters with a request to the high court to take needful action on them as if they had been sent to the high court at the first instance and to give adequate relief to the concerned parties. In all such cases, the high court to which the document is sent may, if it is found necessary, call upon the person who has sent it to appear before it, ascertain further facts from him and proceed to dispose of the matter in accordance with law.

This court shall assign a number to each of such documents sent to the high court and retain a true copy or a photostat copy of the document on its file for reference.

37. IMPROVEMENT OF RAILWAYS

P. Nallathampy Thera vs. Union of India

This judgement is often quoted in PIL cases to show the limitations of judicial power. The petition sought improvement in the functioning of the railways. The court said that in such matters it could not issue directions to the government.

Facts: The petitioner claimed to be a doctor practising in the Wynad district of Kerala. He is a railway commuter. He wanted the implementation of the reports of Kunsru, Wanchoo and Sikri committees which had gone into the working of the railways. Also, he wanted a committee to look into the frequent rail accidents. He pointed out several woes of the ordinary passengers, like thefts, indiscipline, ineffective supervision, want of replacement of equipment and repairs of bridges. The railways filed detailed reply listing the several steps it has taken to improve the railways. The petitioner then filed a reply to it giving more instances of scope for improvement in railway services.

Ruling: The Supreme Court gave a long judgement containing the history of the railways and a discussion on freedom and responsibility but declining to pass any orders. "We are alive to the fact that the government has limitations, both of resources and capacity, yet we hope that the government would rise to the necessity of the occasion and take it as a challenge to improve this great public utility in an effective way and with an adequate sense of urgency. If necessary, it shall set up a high-powered body to quickly handle the many-faced problems standing in the way. Giving

37. Judges: P.N. Bhagwati and R.N. Misra.
AIR 1984 SC 74.

directions in a matter like this where availability of resources has a material bearing, policy regarding priorities is involved, expertise is very much in issue, it is not prudent and we do not propose to issue directions. We do hope and believe, that early steps shall be taken to implement in a phased manner the improvements referred to in the (government) affidavit and in our decision." The court appreciated the petitioner's zeal and asked the railways to pay Rs. 5,000 towards his expenses.

38. PILGRIMS DETAINED DURING ARMY ACTION

Kamaladevi Chattopadhyay vs. State of Punjab

When army is called out to quell civil problems, innocents are likely to face threat to their lives and liberty. Tourists, pilgrims, children and passersby may be victims. In this case, a noted social worker moved the Supreme Court through a writ petition to save such innocents caught in an army action.

Facts: The army operation in 1984 to flush out terrorists from the Golden Temple in Amritsar is a controversial chapter in the annals of Indian history. There is no doubt that several innocent people had also suffered in the army operation. After hearing and reading about the plight of such innocent people, the late social worker of Delhi, Kamaladevi Chattopadhyay, moved the Supreme Court through a habeas corpus writ petition for their release. She complained that several children had been detained in the central jails in Ludhiana and Amritsar after being rounded up during the army action. These children were kept along with other convicts. Though the court issued notice to the state government, it did not respond the first time. However, the jail superintendent of Ludhiana submitted some details which confirmed the allegations in the petition. His report, said the court, "does reveal a sad state of affairs." Among the detained were three mothers and their children, some of them aged one to three years. There were children from age one to 16 years. Some families were Muslim, perhaps visiting the temple as tourists.

Ruling: The court named these children and mothers and ordered their immediate release. It stated that there was not the slightest justification for their detention. The court also asked the Ludhiana jail superintendent to cite the authority under which these persons were kept for nearly four months in jail.

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38. Judges: O. Chinnappa Reddy and V. Khalid.
(1985)1 SCC 41.

The case was taken up several times later also, when the details of persons kept in the Amritsar jails were considered. They were also released.

Without the intervention of the social worker and the court, the detainees would have suffered for a long period as they were not formally charged with anything nor any legal aid given to them. Sometimes people in such conditions suffer merely because there is no one outside who cares for them. Even relatives do not know what to do in such situations.

39. HEALTH HAZARDS FROM QUARRIES

Rural Litigation and Entitlement Kendra, Dehradun vs. State of U.P.

This is the first case of its kind involving issues relating to environment and ecological balance. Though the case related specifically to the lime stone quarries of Mussoorie Hills and the health of the people living in the Himalayan Valley, its implications to the welfare of people all over the country cannot be missed. Similar problems—from quarries, dams, factories, tourism projects and the like—threaten our villages and suburbs. It brings into focus the conflict between development and conservation and serves to emphasise the need for reconciliation between the two in the larger interest of the people. This was a path-breaking environmental case which led many other cases in the years that followed.

Facts: The Rural Litigation Kendra filed a writ petition alleging that the lime stone quarries were destroying the flora and fauna of the Himalayan Valley, and therefore their continued operation was a threat to the lives of the people there. Air and water are polluted, causing health hazards and therefore their fundamental rights under Articles 19 and 21 were violated. The mine operators vehemently opposed these arguments, appointing a large number of senior counsels. The court passed several orders in this case from time to time, but it did not deal with the legal arguments or the constitutional principles. However, the orders passed were very effective and could be treated as precedents.

Ruling: The court appointed several committees to verify the allegations contained in the petition. The first and most important was the Bhargav committee. It visited the area and divided the quarries into three categories. One category of quarries were so hazardous that they had to be shut down. The court ordered their closure permanently. Regarding the other two categories of less harmful quarries, the court appointed another

39. Judges: P.N. Bhagwati, A.N. Sen and R.N. Misra.
AIR 1985 SC 652; (1985)2 SCC 431.

committee to find what could be done about them. They examined the operations of these quarries and recommended corrective measures. The case went on for almost a decade and the court passed orders in the case of each quarry, based on the expert committee report.

The orders apply only to the particular quarries and do not contain legal principles. Therefore, they are not cited here. But they show how judges who want to take affirmative action regarding environment can pursue the case to the logical end. Though the case came up first in 1983, it was still in the active file in 1993. Several judges who dealt with the case had retired in the meanwhile, but the new judges also pursued the cause for over a decade.

The case further showed that the present laws are not only outdated, but their implementation was tardy. The Mines Act 1952 or the Metalliferous Mines Regulations 1961 did not make much difference to the environmental damage caused by the quarries.

The further progress of the case is recorded in two judgements reported in 1989. It is not necessary to go into the details, but some observations from the judgement may be informative as they touch upon the conduct of public interest litigation. {For details you may read 1989 Supp(1) SCC 504 and 537}

"Mining in the Doon Valley area must be completely stopped, though not immediately and suddenly. The manufacture of drug and sugar as also steel would be hard hit if mining activity in this area is stopped all of a sudden. With the pressing demand in the market and discovery of useful limestone deposits in other parts of the country the trade would adjust itself as every economic activity does. The position should be monitored and the switch-over from the present position to a total ban should be spread over a period and not be sudden."

The court rejected the argument of the miners that the judgement of 1985 had concluded the matter and issues could not be revived and reconsidered later. The court said that some issues had been left out in the 1985 judgement. There was nothing wrong in taking them up now. Public interest litigation in this case is not dispute between two parties. It has raised the question whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. Procedural rules do apply to public interest litigations, but, "at the same time, it has to be remembered that every technicality in the procedural law is

not available as a defence when a matter of grave public importance is for consideration before the court."

Those who are interested in reading the further progress of the case may refer to 1986 (Supp) SCC 517 in which the court gave further directions regarding the erring mines.

40. CAN SLUM AND PAVEMENT-DWELLERS BE EVICTED?

Olga Tellis vs. State of Maharashtra

This is a classic case dealing with the rights of those who live in the pavements and slums of big cities. By living there under inhuman conditions for many years, have they required a right to stay on? Can the municipal corporation evict them one fine morning to clear the streets of dirt and poverty? Should they be given alternative accommodation? The judgement, passed by a constitution bench, is eloquent on the plight of the poor, but ultimately grants them few rights. All that they get from this judgement is a declaration that they have a right to livelihood under the Constitution but no right to live on the pavement. The Maharashtra government meanwhile promised alternative accommodation to some of them and the court asked it make good its word.

Facts: The petition was filed by a journalist, Olga Tellis, and a few representatives of the pavement dwellers and slum dwellers of Bombay in 1981 as a public interest litigation. Half the population in the metropolis live on footpaths and slums. They are migrants from other parts of the country and live in squalid conditions. They work in nearby places. The scenario is familiar in any town or city. What provoked this litigation was the policy declared by the state government that all pavement dwellers would be forcibly evicted and deported to their places of origin. "It is a very inhuman existence," the then chief minister justified, "These structures are flimsy and open to the elements. During the monsoon, there is no way these people can live comfortably." So the demolition started and people were sent to far-off places like Salem or Ahmednagar. They were back in the city very soon. Meanwhile the petition on their behalf was admitted by the Supreme Court.

Ruling: The decision of the corporation to demolish the huts was challenged on the ground that it violated Article 21 (right to life) and Article 19 (freedom of movement and to engage in any trade or profession). The

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40. Judges: Y.V. Chandrachud, S.M. Fazal Ali, V.D. Tulzapurkar, O. Chinnappa Reddy and A. Varadarajan.
(1985)3 SCC 545; AIR SC 180.

provisions of the Bombay Municipal Corporation Act, which granted the authorities power to evict, were violative of the fundamental rights guaranteed under Articles 19, 21 and 14 (right to equality) and therefore should be struck down, it was argued.

A journalist, Praful Bidwai, argued on behalf of the slum dwellers that they were living there for over 20 years, their huts were numbered and records kept. The public had no right of way there. The slum dwellers made major economic contribution to the city. The slum dwellers are the *sine qua non* of the city. They are entitled to *quid pro quo*. Therefore it is unreasonable to evict them and destroy their houses. A home is a home wherever it is, it was argued.

Another journalist, Olga Tellis, argued that the clusters of slums were due to flouting of the development and master plans of cities. Population is not evenly distributed and industries are allowed to be set up violating the master plans and even residential premises have been permitted to be converted into commercial premises. She showed how the funds for housing and civic amenities were inadequate and imbalanced. The argument that slum dwellers have criminal propensities was also countered by quoting studies by sociologists. It was stressed that the new trend is not to reverse the rate of growth of cities, but to ensure their growth in a planned manner. There is no shortage of land even in Bombay, but it was planning which was lacking.

Several senior counsels also argued supporting the petition. They argued that eviction amounted to denying the slum dwellers the right to their livelihood guaranteed in Article 21. No person can be deprived of this right except according to procedure established by law. Moreover Article 19(1)(e) guaranteed the right to reside and settle in any part of India and Article 19(1)(f) guaranteed the right to carry on any occupation, trade or business. It was also argued that the courts had the responsibility to reduce inequalities and social imbalances by striking down laws which perpetuate them. The Bombay Municipal Corporation Act was one such, passed in 1886, when slums and the consciousness of the modern notion of a welfare state were not present to the mind of the colonial legislature.

It was further argued that the slum dwellers were not "trespassers." Their occupation of pavements or slums arises from economic compulsions. The state is bound to provide them necessities of life.

The Municipal Corporation rejected all these contentions. It said that the petitioners are encroachers who had no fundamental right to live on the

pavements or slums. Pedestrians cannot use the footpaths and therefore are exposed to danger from the traffic. The encroachers are not entitled to basic amenities, the corporation must prevent nuisance caused by the petitioners to the citizens and there are no vacant pieces of land in the city. Therefore, deportation and destruction of the hutments were justified.

The constitution bench held that eviction would result in deprivation of the livelihood of the petitioners. Article 21 guaranteeing right to life includes right to livelihood. This right can be taken away only by a reasonable procedure established by law. The procedure for eviction provided in the Municipal Corporation Act is reasonable. Therefore Article 21 is not violated.

The court further declared that no person has the right to encroach on footpaths, pavements or any other place reserved for public purpose. Encroachments may be removed with or without notice under the Bombay law.

As the government had promised alternative sites to those who had been counted in the census, the court asked it to keep the pledge. Those who have been living for long periods, like 20 years, should not be evicted except for a public purpose and after giving alternative sites. Eviction was also prohibited in the rainy season.

The judgement is a long essay dealing with the right to livelihood and several other constitutional issues, which would interest only constitutional lawyers.

41. EVICTION OF SLUM DWELLERS

K. Chandru vs. State of Tamil Nadu

While the case of Olga Tellis discussed earlier (40) dealt with the problem in Bombay, this judgement was delivered by the same constitution bench and dealt with the problem in Madras. Again, the slum dwellers gained little from this litigation.

Facts: Two petitioners asked the court, in their writ petitions, to restrain the authorities from evicting those living on the pavements and slums of Madras without providing them alternative accommodation. They also prayed that the authorities should provide them with basic amenities like water, drainage and electricity. Their arguments were similar to those advanced in favour of their Bombay counterparts in the Olga Tellis case.

41. (1985)3 SCC 536.

Ruling: The judgement examined in detail the statements of the authorities who asserted that the petitioners in fact encroached upon public land finding that the old slum dwellers were given alternative accommodation. It was the new trespassers who were not given alternative accommodation. The court stated that it was satisfied on facts revealed that the state government had adopted a benevolent and sympathetic policy in regard to the slum dwellers. In view of that, it did not pass any substantial direction, except that the eviction should not be made during the rainy season. "We will only express our confidence that the government will continue to evince the same dynamic interest in the welfare of the pavement dwellers and slum dwellers."

The noteworthy point of these two judgements is that in both cases, alternative accommodation was given to the genuine slum dwellers by the governments. Without that, the court would have taken a tougher stand against the municipal authorities. The slum dwellers also got more time to move out.

42. RAGGING IN COLLEGES

State of Himachal Pradesh vs.
A Parent of a Student of Medical College, Shimla

This is an example, in the opinion of the Supreme Court, where public interest litigation should not have been entertained by the Himachal Pradesh High Court. The high court pressed the chief secretary to pass a law against ragging in colleges, which the court had no power to do. Also, the court entertained the petition without disclosing the identity of the petitioner. On both these counts, the high court went wrong. PIL is a powerful weapon which should not be misused, the Supreme Court said.

Facts: A guardian of a medical student complained to the high court that ragging of freshers was rampant in the campus. His letter was treated as a writ petition, and at his request, his name was withheld to prevent further harassment of his son who was ragged by the seniors. The high court asked a committee to inquire into the complaint. In its report, the committee suggested that a rule should be introduced to prevent ragging. In subsequent proceedings, the high court pressed the chief secretary to pass the rule, which the Supreme Court found was unwarranted as it woulld interfere with

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42. Judges: P.N. Bhagwati, A.N. Sen and R.N. Misra.
AIR 1985 SC 910; (1985)3 SCC 169.

the power of the legislature. It also said that anonymous letters should not be entertained.

Ruling: Since the judgement deals with the limits of courts' powers in PIL and the problem of anonymous complaints, it is reproduced at some length here:

If the executive is not carrying out any duty laid upon it by the Constitution or the law, the court can certainly require the executive to carry out such duty and this is precisely what the court does when it entertains public interest litigation. Where the court finds, on being moved by an aggrieved party or by any public spirited individual or social action group, that the executive is remiss in discharging its obligations under the Constitution or the law, so that the poor and the underprivileged continue to be subjected to exploitation and injustice or are deprived of their social and economic entitlements or that social legislation enacted for their benefit is not being implemented thus depriving them of the rights and benefits conferred upon them, the court certainly can and must intervene and compel the executive to carry out its constitutional and legal obligations and ensure that the deprived and vulnerable sections of the community are no longer subjected to exploitation or injustice and they are able to realise their social and economic rights. When the court passes any orders in public interest litigation, the court does so not with a view to mocking at legislative or executive authority or in a spirit of confrontation but with a view to enforcing the Constitution and the law, because it is vital for the maintenance of the rule of law that the obligations which are laid upon the executive by the Constitution and the law should be carried out faithfully and no one should go away with a feeling that the Constitution and the law are meant only for the benefit of a fortunate few and have no meaning for the large numbers of half-clad, half-hungry people of this country. That is a feeling which should never be allowed to grow. But at the same time the court cannot usurp the functions assigned to the executive and the legislature under the Constitution and it cannot even indirectly require the executive to introduce a particular legislation or the legislature to pass it or assume to itself a supervisory role over the law-making activities of the executive and the legislature.

There is also one other error into which the high court seems to have fallen. The high court treated the letter of the guardian of the student as a writ petition. This was certainly within the jurisdiction of the high court to do so, since it is now settled by law that this court under Article 32 of the Constitution and the high courts under Article 226 of the Constitution can

treat a letter as a writ petition and take action upon it. We may of course make it clear that it is not every letter which may be treated as a writ petition by the Supreme Court or the high court. It is only where a letter is addressed by an aggrieved person or by a public spirited individual or a social action group for enforcement of the constitutional or legal rights of a person in custody or of a class or group of persons who by reason of poverty, disability or socially or economically disadvantaged position find it difficult to approach the court for redress that the Supreme Court or the high court would be justified, nay bound, to treat the letter as a writ petition. There may also be cases where even a letter addressed for redressal of a wrong done to an individual may be treated as a writ petition where the Supreme Court or the high court considers it expedient to do so in the interests of justice. This is an innovative strategy which has been evolved by the Supreme Court for the purpose of providing easy access to justice to the weaker sections of Indian humanity and it is a powerful tool in the hands of public spirited individuals and social action groups for combating exploitation and injustice and securing for the under-privileged segments of society their social and economic entitlements.. It is a highly effective weapon in the armoury of the law for reaching social justice to the common man. The high court was, therefore, certainly right in entertaining the letter as a writ petition and no exception can be taken to it, but it was wholly in error in directing that the letter should not be placed on the record of the proceedings and the identity of the guardian and the student should not be disclosed. It is difficult to see how any proceedings can be entertained by the court keeping the petitioner before it anonymous or his identity secret. If the identity of the petitioner is not disclosed, how would the respondent against whom relief is sought ever be able to verify the authenticity of the petitioner and the credibility of the case brought by him? It would be contrary to all canons of fairplay and violative of all principles of judicial propriety and administration to entertain a writ petition without disclosing the identity of the petitioner, though the court knows who the petitioner is.

43. DOES CONVERSION IMPROVE STATUS?

Soosai vs. Union of India

In this case, a cobbler and the Movement for Protection of Human Rights of Marginalised Communities challenged the rule that members of the Scheduled Castes who had embraced Christianity would not be eligible

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43. Judges: P.N. Bhagwati, R.S. Pathak and A.N. Sen.
1985 (Suppl) SCC 590.

for the benefits given to the Scheduled Castes. They challenged the legality of the Constitution (Scheduled Castes) Order 1950 on the ground that only Hindu or Sikh members of the castes enumerated in the schedule to the order were deemed to be Scheduled Castes. The petition was dismissed.

Facts: Soosai belonged to the Adi Dravida community and was a convert to Christianity. He was a cobbler and worked on the roads of Madras. After a survey by the Khadi board of sites where cobblers worked, many cobblers were allotted bunks free of cost. But Soosai was not. When he inquired why, he was told that it was because he embraced Christianity. The order granting free bunks to cobblers specifically stated that persons belonging to the Scheduled Castes and converted to Christianity are not eligible for assistance under the scheme. The order had been made in consonance with the Constitution (Scheduled Castes) Order 1950 which specifically declared that no person who professed a religion different from the Hindu or the Sikh religion shall be deemed to be a member of a Scheduled Caste. The petitioners challenged the order as violative of Articles 14 (equality before law), Article 15 (discrimination on the ground only of religion) and Article 25 (freedom of conscience and the right to freely profess, practise or propagate religion). It was argued that Soosai was a Hindu belonging to the Adi Dravida caste and on conversion to Christianity he continued as a member of that caste. The caste is listed in the schedule to the order. He was denied the bunk only on the ground of religion, which act was unconstitutional, it was argued.

Ruling: The court held that it was not enough to show that the person continued in the same caste after conversion. It must be shown that he suffered from "a comparable depth of social and economic disabilities and cultural and educational backwardness and similar levels of degradation within the Christian community necessitating intervention by the State." It was also necessary to establish further that the disabilities suffered from such caste membership in the social order of its origin—Hinduism—continued in their oppressive severity in the new environment of a religious community. No authoritative and detailed study dealing with the present conditions of Christian society has been presented except some references "in the most cursory manner." Thus, the petitions were dismissed.

44. COURT MAKES RULES FOR ADOPTION

L.K. Pandey vs. Union of India

In this judgement, the Supreme Court laid down rules for adoption of Indian children by foreign parents. There is no comprehensive law of adoption in India. The only legislation is the Hindu Adoptions and Maintenance Act, which covers only Hindus adopting Hindu children. Several attempts were made to pass an Adoption Bill, but all efforts of Parliament have failed so far, as champions of personal laws opposed it. The Supreme Court filled part of this vacuum in this judgement, by laying down rules for adoption by foreigners. The judgement is a rare instance of the court stepping into the field of law-making. Its normal role is only to interpret laws passed by Parliament. Here it lays down law. Though the court has been criticised by some legal experts for this encroachment of powers, the benefits of this judgement outweighed all those negative aspects. The rules are now accepted without objections from any quarters. In later judgements, the court further modified the rules laid down in this judgement.

Facts: This writ petition was initiated on the basis of a letter addressed by a Supreme Court lawyer, Mr. L.K. Pandey, complaining of malpractices indulged in by certain persons engaged in the work of offering Indian children in adoption to foreign parents. The letter was based on reports appearing in a London paper, followed up by the Indian papers. It was alleged that not only Indian children of tender age are under the guise of adoption "exposed to the long horrendous journey to distant foreign countries at great risk to their lives but in cases when they survive and where these children are not placed in the shelter and relief homes, they in course of time become beggars or prostitutes for want of proper care from their alleged foreign foster parents." The petitioner, therefore, sought relief restraining Indian-based private agencies from carrying out further activity of routing children for adoption abroad and directing the government and its welfare agencies to carry out their obligations in the matter of adoption. This letter was treated as a writ petition and the court issued notice to the authorities. Later more than 50 voluntary agencies from India and abroad intervened and discussed the problem threadbare at several hearings. The court then analysed the problems and accepted the suggestions from all parties concerned. These were incorporated in the judgement.

Ruling: The Supreme Court laid down elaborate guidelines in two judgements. Now, the biological parents and the child are required to be

44. Judges: P.N. Bhagwati, R.S. Pathak and A.N. Sen.
AIR 1986 SC 272; 1985 (Supp) SCC 701.

studied by an authorised agency in this country. The prospective parents have to be processed by an authorised agency in their country. After tallying the data, a district judge empowered to deal with adoption registers the papers. There is also a procedure to monitor the progress of the child for a few years. Details of the procedures may be found in the judgements. Further orders on inter-country adoption may be found in AIR 1992 SC 118.

45. PIL MIXED WITH ALCOHOL, POLITICS

Chaitanya Kumar vs. State of Karnataka

This judgement is often cited in instances of abuse of PIL. The case made political history and serious allegations against the chief minister were flung. Though the case deals with arrack contracts, it is quoted here as it dons the garb of PIL and the court makes some comments on it.

Facts: As stated, the facts refers to award of contracts for bottling arrack. The legality of the government action was challenged in the high court by way of a PIL. The government order was struck down as arbitrary, illegal and "shocking to the judicial conscience." Some persons who had been awarded the contracts therefore appealed to the Supreme Court to set aside the high court decision. The appeal was dismissed.

Ruling: As it is unnecessary to go into the political figures and the excise regulations for our purpose, only a paragraph referring to the conduct of PIL is summarised here. The court stated that while it was true that in a PIL, those who profess to be public-spirited citizens could not be encouraged to indulge in wild and reckless allegations besmirching the character of others, at the same time, the court could not close its eyes and persuade itself to uphold publicly mischievous executive actions which have been exposed. When arbitrariness and perversion are writ large and brought out clearly, the court cannot shirk its duty and refuse its writ. Advancement of public interest and avoidance of public mischief are the paramount considerations. As always, the court is concerned with the balancing of interests. With these remarks, the Supreme Court upheld the high court decision.

.45 Judges: O. Chinnappa Reddy and K.N. Singh.
AIR 1986 SC 825.

46. ROAD TO A HARIJAN VILLAGE

State of H.P. vs. Umed Ram

Though the basic issue was about building a road to a Harijan village, the dispute spread over to the power of the courts against the other arms of the state—the executive and the legislature. The judgement deals mainly with the separation of powers of these organs under the Constitution in the context of PIL and is very academic. These aspects have already been dealt with in Bandhua Mukti Morcha case (AIR 1984 SC 802) and Nallathampi Thera case (AIR 1984 SC 74).

Facts: Some 15 persons belonging to certain villages in the Shimla district sent a letter-petition to the high court alleging that the construction of a road connecting their villages were stalled by certain other villagers in collusion with the authorities. They alleged that in the absence of a road they had to go to the nearest city after climbing five miles uphill carrying heavy loads on their backs. They stated that democracy was meaningless to them. There was no access by communication to the outside world. The right to dignified life (Article 21) and the right to move freely (Article 19(1)(d)) were violated especially in the context of Article 38(2) which enjoins the state to minimise equalities in income, facilities and opportunities among people living in different parts of the country. The state government, in its reply, described the steps it had taken to build the road and it could not complete the work due to lack of funds. The high court after hearing the parties directed the PWD to proceed with part of the construction and complete it within the financial year. It also asked the PWD engineer to make an application to the government to sanction the required fund, and the government was directed to consider the demand favourably. The court asked the engineer to report to it at the next hearing the progress of the road construction. At this stage, the government appealed to the Supreme Court objecting to the orders of the high court. It argued that the high court had no power under the Constitution to direct the state government to allot funds for a project. Funds are allotted by the legislature in annual financial budgets and the executive decides the priorities. The court cannot interfere in the powers vested in the legislature and the executive, it was argued.

Ruling: The Supreme Court stated that the high court had not exceeded its powers. The high court had only asked the executive to bring to the notice of the legislature whether some reallocation was feasible among the sanctioned expenditure for roads leaving the priorities to the discretion

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46. Judge: Sabyasachi Mukharji.
AIR 1986 SC 847.

of the competent authorities. "The high court has served its high purpose of drawing attention to a public need and indicated a feasible course of action. Nothing further need be done by the high court in this matter," the judgement said. "The way we read the high court's order with the clarification indicated, it does not transgress the limit."

47. CONSUMERS USE PUBLIC INTEREST LITIGATION

Ashok Kumar Mittal vs. Maruti Udyog Ltd.

This case is significant as it was the first one raising a consumer issue. Apart from that it has very little relevance now, as such issues are now governed by the Consumer Protection Act. At the time of this case, the law was not in force. Now, there are consumer forums at district, state and national levels. All consumer complaints are dealt with by them, with appeals to the next superior forum. A final appeal to the Supreme Court is also possible.

Facts: When Maruti car started rolling out of the factory, there was a craze for the vehicle, as it was preceded by much publicity. Acquisition of this so-called people's car was a symbol of affluence and glamour. So there was a long queue for it. The government company kept a manufacturer's quota of 5 per cent from which cars were allotted out-of-turn to VIPs, including Supreme Court judges. The list of the VIPs was challenged as arbitrarily chosen and violative of the fundamental right to equality (Article 14).

Ruling: The court did not lay down any law, though a lot of legal niceties were put forward on behalf of the car-crazy consumers. The court merely set guidelines on the allotment of cars.

48. HAZARDS OF INDUSTRIAL POLLUTION

M.C. Mehta vs. Union of India

If poisonous gas leaks from a factory causing death or injury, what are the remedies available to the people? This is a growing threat in modern life, not only in the cities where industrial units are clustered, flouting civic laws, but also in backward areas where factories are set up without disclosing the

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47. Judges: V.D. Tulzapurkar and A.P. Sen.
AIR 1986 SC 1923; (1986)2 SCC 293.

48. Judges: P.N. Bhagwati, D.P. Madon and G.L. Oza.
(1986)2 SCC 176 and 325.

ature of their operation. Several laws to control air and water pollution ave been passed in the late eighties, but their implementation has been ardy. Therefore, the Supreme Court has been taking an activist stand in nvironmental matters. Since 1985, a lawyer, Mr. M.C. Mehta, brought to he court petitions alleging several instances of threat to life and health aused by gas leaks, industrial wastes and dangerous operations. The court as passed several orders in those petitions. The present case is one of the irst such important cases. Many other cases were to follow under the title "M.C. Mehta vs. Union of India."

Facts: Exactly one year after the 1984 Bhopal gas leak killing over 3,000 persons, another of minor proportions occurred in Delhi. This time it was the leak of oleum gas from the plant of Shriram Foods and Fertiliser Industries causing injuries to several people in the crowded parts of the capital where the unit is situated. A writ petition was filed claiming damages for the victims by Mr Mehta. The court passed several orders on this petition spread over a few years. The action taken by the court is summarised below.

Ruling: In the first order, the court considered the opinion of expert committees regarding reopening of the unit which was ordered to be shut down following the gas leak. The court allowed the unit to reopen subject to strict conditions. The other orders are not very important as they refer to that particular plant.

But the case culminated in a judgement by a constitution bench which made drastic changes in the law of compensation so far followed in this country. It said that the compensation amount should be proportionate to the financial capacity of the erring company and not the earning capacity of the victims. The liability of the industry is "absolute," which means that it cannot plead any excuse. Once it is shown that gas leaked from the unit, its owners shall be liable to pay compensation, without any exception. The directors and officers responsible for the death or injuries shall also be liable to pay compensation, the judgement stated.

But all these drastic rulings have had little effect because of certain legal flaws in the judgement. Jurists have opposed it, and some of the Supreme Court judges have in later judgements stated that the constitution bench ruling must be reconsidered. There are legal issues to be sorted out by the judges and jurists. It is sufficient to note that the Supreme Court has taken up PIL raising weighty questions relating to environmental pollution

and health hazards and passed orders to prevent damage. What it could no decide is the criterion for assessing the compensation.

49. RULING BY ORDINANCES

D.C. Wadhwa vs. State of Bihar

This judgement decided a technical question on constitutional law, bu it is notable on two counts. It was filed by an academic, who during hi research, found that the Bihar government was run mainly on ordinances an not laws passed by legislature. The discovery provoked him to file a PIL i the Supreme Court asking it to stop this practice. Thus the professor cam out from the cold and fought this famous case which was applauded b jurists and the press. Secondly, it highlighted the mindless manner in whic ordinances were issued on matters vital to the rights and welfare of th ordinary people. PIL was effectively used by an academic to stem the dri towards autocratic rule.

Facts: The petition pointed out that the Bihar government kept aliv ordinances for decades, while they should lapse within six months or as soo as the legislative assembly held its session. The ordinances wer repromulgated over and over again, sometimes over ten years. The peti tioner called it a fraud on the Constitution.

Ruling: The government raised the question of *locus standi*, but th court rejected it quoting the S.P. Gupta judgement.

The court held that the governor had no power to repromulgate th same ordinance successively without bringing it before the legislature. Th executive cannot take over the role of the legislature in making laws for a indefinite period.

50. COMPENSATION FOR FIRING VICTIMS

People's Union for Democratic Rights vs. State of Bihar

This judgement is significant to the extent that the Supreme Cour doubled the compensation amount for victims of police firing in a backwar area of Bihar. It also observed that such cases should be considered mainl by the high courts.

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49. Judges: P.N. Bhagwati, R.N. Misra, G.L. Oza, M.M. Dutt and K.N. Singh. AIR 1987 SC 579; (1987)1 SCC 378.

50. Judges: R.N. Misra and M.M. Dutt. AIR 1987 SC 355; (1987)1 SCC 265.

Facts: It was alleged in the PUDR petition that about 700 poor peasants and landless people held a meeting relating to a land dispute involving a rich family. The police suddenly, without warning, opened fire, killing an undetermined number of the backward people. Some of the victims of the dead were given Rs 10,000 as compensation. The police filed "false" cases against some demonstrators. PUDR asked for higher compensation and withdrawal of the cases.

Ruling: The compensation was doubled. Moreover, the authorities had given compensation to the relatives of only some victims. The court directed the state to pay uniform amount in all cases. Apart from this lump sum, the relatives can also claim a just compensation according to the law of torts.

The court rejected the plea of PUDR that the case relating to the firing pending in the Patna High Court should be transferred to the Supreme Court. This is because it would be convenient for the parties to produce material in Patna rather than go to Delhi.

Regarding the cases against the peasant families, the Supreme Court directed the police to complete the investigation in three months.

51. PROBE INTO DOWRY DEATHS

Joint Women's Programme vs. State of Rajasthan

This is one of the "dowry death cases" into which a women's organisation had sought deeper inquiry. Several other organisations also have pursued unnatural deaths of young married women under suspicious circumstances. The court has passed interim orders in such cases to the police authorities, which forced them to be alert and more honest in their investigations pursuant to the filing of first information reports by the relatives of the deceased woman. Since these orders refer only to the facts of those particular cases, they have no general application. It would be enough to know that if there are glaring omissions in the police investigations, a public interest litigation of this type could be initiated. The high courts and the Supreme Court can take note of the violation of the fundamental right to life and liberty (Article 21) and pass orders to remedy the situation. Though dowry deaths are normally covered by the Indian Penal Code and the Criminal Procedure Code, in cases of gross cases, Article 21 may be used to move the high courts or the Supreme Court directly. This

may be done especially when the role of the police and the medical witnesses are suspect. The writ petition may point out their lapses and ask the court to appoint an independent commission to inquire into the facts, or direct a higher police officer to take charge of the case or hand over the investigation to the Central government agencies or take any other appropriate steps. The prayer should be devised according to the facts of each case.

Facts: Being two typical cases of dowry deaths from Rajasthan, the judgement does not narrate the facts.

Ruling: The court directed that the investigation must be conducted by an officer not below the rank of an S.P. The officer shall not be "inhibited" by the view taken earlier by the subordinate officers.

The court also directed the state government to create special dowry cells at the state level to investigate into dowry deaths through specialised investigative units. It also directed the government to associate two leading women social workers to be named by the Social Welfare Ministry with such dowry cells.

52. CHILDREN IN REMAND HOMES

Sheela Barse vs. Children Aid Society

This is one of the public interest cases moved by a journalist of Bombay in the high court and the Supreme Court on behalf of children and women in custody. This case referred to the conditions of children in remand homes or observation homes run by the Children's Aid Society, Bombay, which is a public trust. The journalist, Sheela Barse, visited the remand homes or jails to make a first-hand study of the problem. She then acquainted herself with the law on the subject. She argued the cases herself. Though her style of functioning made her a controversial figure–some judges even passed adverse remarks against her–the courts have passed a number of far-reaching orders in her cases to benefit children and women who had no one to represent their cases.

Facts: In a letter to the Bombay High Court, Barse made several complaints regarding the working of the children's remand homes. The letter was treated as a writ petition by the high court. Some of the

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51. Judges: M.P. Thakkar and B.C. Ray.
AIR 1987 SC 2060.

52. Judges: P.N. Bhagwati and R.S. Pathak.
AIR 1987 SC 656.

grievances were: delay in restoration of children to their parents despite orders of the juvenile courts, mindless way in which children are taken into custody and absence of follow-up action after admission to the remand homes amounting to illegal detention and harassment. The authorities denied the allegations. The high court accepted some of the allegations and rejected the others and passed some orders to remedy the situation. It also passed certain remarks against her. Dissatisfied with the high court order, she moved the Supreme Court.

Ruling: Regarding the allegation that the children are forced to work without wages, the court held that payment was not necessary. The children should not be detained long in the remand homes. As long as they are there, they should be kept occupied in work which would help them to adapt well to later life.

Only dedicated persons with proper training should be introduced into children's homes. Juvenile courts must be presided over by judicial officers with special training. Since the Children Aid Society is a public trust with the chief minister as ex-officio president, it is an arm of the government. So it must satisfy the requirements of the fundamental rights and the directive principles of state policy enumerated in the Constitution.

Regarding certain "disparaging" remarks made by the high court against the petitioner, the Supreme Court stated that the high court was not justified in making those observations. She brought the letter petition before the high court in larger public interest and for securing implementation of the law. The high court should have borne in mind that she was not a lawyer and was not acquainted with the procedure followed in the court. The Supreme Court, therefore, deleted the criticism of the petitioner in the high court judgement.

53. PIL 'WITHOUT RHYME OR REASON'

Sachidanand Pandey vs. State of West Bengal

Sometimes, in the name of public interest, private scores are settled. The Supreme Court has come across several cases and this is one such where the motive was suspect. One judge of the bench, therefore, wrote a separate judgement on this aspect and laid down certain norms, which were quoted in similar cases later.

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53. Judges: O. Chinnappa Reddy and V. Khalid.
AIR 1987 SC 1109; (1987)2 SCC 295.

Facts: Since Calcutta lacked five-star hotels, the West Bengal Government decided to give plots in good locations at concessional rates to hoteliers. Therefore, the cabinet decided to lease out four acres from the zoo land, so far used for fodder cultivation and burial ground for animals, to a leading hotel company. The company assured the government that the building would be a low-rise structure to avoid disturbing the birds' flight paths and particular care would be taken to see that there would be no bright lights to disturb wildlife. However, a petition was filed against the cabinet decision by a trade unionist, two life-members of the zoo and two residents of the neighbourhood. The high court dismissed it. So two of them appealed to the Supreme Court alleging that the ecology would be disturbed by the hotel project and there was violation of Article 48-A of the Constitution (directive principle regarding protection and improvement of environment and safeguarding of forests and wildlife) and Article 51-A (fundamental duty of citizens to protect environment). They also alleged that the government granted the lease without considering the consequences.

Ruling: The court rejected all these arguments. It said that the government was alive to the problems and took its decision openly and after hearing all viewpoints. It acted bona fide. Its decision was neither against the interests of the animals nor against the financial interests of the state. Thus, the appeal was dismissed on all legal arguments.

What is significant regarding this case is the separate judgement delivered by Justice Khalid regarding public interest litigation. It is summarised below:

The tenacity with which this expensive litigation was pursued by the petitioners before the single judge and the division bench of the high court and the Supreme Court is commendable. But after hearing the lengthy arguments advanced, I ask myself the question whether this exercise could not have been avoided.

Today public interest litigants rush to courts to file cases in profusion under the attractive name of public interest litigation. They must inspire confidence in courts and among the public. They must be above suspicion. See the facts of this case and the end result.

One would have thought that the concurrent decisions of the single judge and the division bench of the high court would have persuaded the petitioners to rest content with the litigation by accepting the verdict. They could have moved the government or taken other steps to start an additional zoo which the government promised. But they appealed to this

court. This court gave priority to this case despite the huge pendency of cases before it, to see whether public interest was really in peril or not. The appeal has to be dismissed as it is devoid of merits.

My purpose in adding these few lines of my own is to highlight the need for restraint on the part of the public interest litigants when they move the courts. Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. It is, therefore, necessary to lay down clear guidelines and to outline the correct parameters of entertainment of such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigation the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions.

It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the court should leave aside procedural shackles and hear such petitions and extend jurisdiction for remedying the hardships and miseries of the needy, the underdog and the neglected. I will be second to none in extending help when such help is required. But this does not mean that the doors of this court are always open for anyone to walk in. It is necessary to have some self-imposed restraint on public interest litigants. I conclude this short judement with a lurking doubt in my mind and with a question: "Is there more than what meets the eye in this case?"

54. HARMFUL MEDICINES IN EVERY STORE

Vincent Panikulangara vs. Union of India

This case relates to the sale of banned and harmful drugs. It endangers the life of the citizens and therefore violates Article 21 which guarantees life and liberty.

Facts: Mr. Vincent Panikulangara, a lawyer, filed this public interest petition seeking a ban on the import, manufacture, sale and distribution of drugs which have been recommended for banning by the Drugs Consultative Committee. He sought cancellation of all licences authorising import, manufacture, sale and distribution of the drugs. He also asked for the setting up of a committee to study the hazards suffered by the people on

54. Judges: R.N. Misra and M.M. Dutt.
AIR 1987 SC 990; (1987)2 SCC 165.

account of such drugs. The petitioner alleged that the drug industry in this country was dominated by multi-national corporations, which make huge profits as the Indian Government exercises very little control over them. Drugs banned in western countries are freely circulated here.

Ruling: The Supreme Court agreed that the issues raised in the petition were of vital importance to the citizens. But it said: "Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far-reaching implications of the total ban on certain medicines, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determining such matters." The technical aspects which arise for consideration in a matter of this type cannot be effectively handled by the court. It also involved the question of policy. It is for the government to take a decision, keeping the best interest of citizens in view. No final say in regard to such aspects come under the purview of the court.

The court passed some general observations about the duty of the welfare state to maintain the health of its citizens, and asked the government to broadbase the existing institutions which watch over public health.

The court also remarked that in public interest litigation, statutory bodies should not be reluctant to come forward and assist the court. They have a duty to join the proceedings. Referring to the many bodies which failed to appear in the court, the judgement said that "an attitude of callous indifference cannot be appreciated." Public interest litigation is not a normal litigation with adversaries pitted against each other but a joint effort to find solution to a problem.

55. PERMISSION TO INTERVIEW PRISONERS

Sheela Barse vs. State of Maharashtra

This ruling deals with the right of a journalist to interview prisoners to find out information regarding them and their conditions in jail. The court ruled that though a journalist has no constitutional right under Article 19 or 21 to interview prisoners, they may be allowed restricted access as they are "friends of society and public spirited persons." This limited right can, in favourable circumstances, be claimed by social workers also, though it has not been exercised after this case. But there is no harm in

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55. Judges: R.N. Misra and M.M. Dutt.
(1987)4 SCC 373.

the social workers trying to take advantage of this case as well as another, called Prabha Dutta case, which is discussed along with this.

Facts: This petition was filed by the same Bombay journalist who had earlier moved the court on behalf of children in prison. In this case, she sought permission to interview women prisoners in the jails in Maharashtra. The Inspector General of Prisons of the State permitted her to do so in respect of female prisoners in three jails. When she started tape-recording the interviews with the prisoners at the Bombay central jail, she was advised instead to keep notes only of interviews. She objected to this. The IG then told her that he has changed his mind and withdrawn his permission. She was later informed that grant of permission for interview was a matter of discretion of the IG and such interviews are ordinarily allowed to research scholars only. Barse, therefore, moved the court pleading that the citizen has a right to know whether the government is administering the jails in accordance with law. She, in fact, wrote a letter which was turned into a writ petition.

She argued that Articles 19(1)(a) (freedom of expression) and 21 (right to life and liberty) of the Constitution guaranteed to every citizen reasonable access to information about institutions that formulate, enact and implement the laws. Every citizen has a right to receive such information through media and public institutions, as it is physically impossible for every citizen to be informed about all public issues individually and personally. So the petitioner has right to collect information to disseminate to citizens. The press has a special responsibility in this regard. Conditions in jails are directly connected with Article 21. It is the obligation of society to ensure that appropriate standards are maintained in the jails.

The IG countered these arguments saying that Barse was not employed by any newspaper but only writing as a "freelance" journalist. The permission earlier granted was a mistake of the authorities, and contravention of the jail rules contained in the state prison manual. Interviews are granted only to research scholars as part of the fieldwork for Ph.D, relatives and legal advisers for facilitating defence of the prisoners. The state government also quoted the Maharashtra Visitors of Prisons Rules under which a board of visitors are supposed to keep a check on the jail conditions. There is also a body of non-official visitors. All these rules were meant to protect the prisoners. If an uncontrolled and unguided right of visit is provided to citizens, it would be difficult to maintain discipline. It was further argued that the earlier writings of Barse regarding jails were

"one-sided and nothing but exaggeration." They were defamatory, irresponsible and reckless, it was contended by the state.

Ruling: The Supreme Court granted the right to interview with some restrictions. It held that the citizen has no right under Articles 19 and 21 to enter jails and collect information. But in order to ensure the right to life and liberty of the prisoners, it becomes necessary to permit journalists "as friends of society and public spirited citizens" to interview prisoners.

Though interviews may be granted to bring out the correct information, the right of the journalist is regulated. The information gathered must be cross-checked with the authorities so that wrong facts are not published. The interviewers must agree to the reasonable restrictions (not others) contained in the jail manuals. Interviews cannot be forced on unwilling prisoners. There may be other instances where interviews may be denied. Tape-recording may be allowed, but it should be subject to special permission.

The court quoted a few earlier judgements in which these aspects were discussed. The Prabha Dutt case (1982)1 SCC 1 was a case in which a journalist got permission to interview a convict in the death row. Sunil Batra vs. Delhi Administration (1978)4 SCC 494 also was quoted in the present judgement while discussing right to liberty.

56. GANGA POLLUTED BY INDUSTRIES

M.C. Mehta vs. Union of India

This is the first of a series of orders on the pollution of the Ganga by industries and municipal neglect. This order deals mainly with tanneries and other industries in Kanpur and Tajman. The court closed down a number of polluting units temporarily.

Facts: The petition was filed by a lawyer, Mr. M.C. Mehta, seeking to restrain the tanneries from letting out industrial effluents into the Ganga till they put up necessary treatment plants. When this public interest petition was taken up for the first time, the Supreme Court directed the issue of notice under Order 1 Rule 8 of the Code of Civil Procedure treating it as a representative action by publishing the gist of the petition in the newspapers and calling upon all industrialists and local bodies along the river to appear before the court to show cause why the directions

56. **Judges: E. S. Venkataramaiah and K.N. Singh.**
(1987)4 SCC 463; AIR 1988 SC 1037.

sought for should not be passed. A large number of them appeared in court after notice and explained their stand. The court separated the case of tanneries from the rest and took it up first.

Ruling: The court quoted Article 48A and 51A of the Constitution which deal with the protection of environment. It is both a directive principle guiding the government and a fundamental duty of a citizen. It also narrated the history of the legislation of the Water Pollution Act in 1974 and the Environment (Protection) Act in 1986.

The court, after hearing the parties, observed that there was not much dispute on the question that the discharge of the effluents has been causing considerable damage to the life of the people and the acquatic life. About 20 tanneries did not even bother to appear in the court, though they were polluting the river. So they were restrained from operating their units until they set up treatment plants.

Some others which had put up primary plants were allowed to function subject to the condition that they were kept in sound working order.

The court also directed the Central Government, the U.P. Water Pollution Control Board and the district magistrate to enforce the order faithfully. In conclusion, the order explained: "We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people."

The court continued to monitor the progress of the anti-pollution measures in subsequent orders. In 1990 it appointed a committee of experts to visit Kanpur and submit a report after inspection of the treatment plants claimed to have been set up by a number of tanneries. The committee reported that some tanneries had not taken any steps for installing primary treatment plants. Some others had installed the plants, but not operating them. In others, the plants were not in working order. The committee classified them all into five categories and recommended measures to be taken against each category. The tanneries objected to the findings of the committee, but the court accepted its report and issued directions to correct the defects in the case of each category. The case was still pending in 1993.

57. SUPERNATURE ON TELEVISION

Odyssey Communications Ltd. vs. Lokvidyan Sanghatana

Can the state-owned electronic media permit telecast of serials which apparently promote blind faith and superstitions? Can public-spirited persons stop the telecast by moving the court? Freedom of expression guaranteed under Article 19 of the Constitution is dealt with in this context.

Facts: Doordarshan was telecasting a 13-episode serial called *Honi Anhoni* depicting obscure and mysterious stories like that of rebirth. Two organisations moved the Bombay High Court against the telecast by way of PIL, alleging that the episodes created fear in the minds of common viewers, especially children as the stories referred to ghosts, rebirth, precognition and the like. It spread unscientific thinking and blind beliefs. It was the duty of the state not to encourage blind beliefs. The high court, after hearing the government, stopped the telecast after the eleventh episode. Therefore, the producer appealed to the Supreme Court. The Supreme Court vacated the injunction and the serial was completely telecast. The producer pointed out that the last two parts were devoted to condemnation of blind faith and superstition. A doctor and a professor gave explanations for unusual occurrences and urged the viewers to search for scientific reasons, instead of following the path of blind faith.

Ruling: The Supreme Court stated that the freedom of expression is a "preferred right" which is always very zealously guarded by the court. The right of a citizen to exhibit films on Doordarshan subject to the terms and conditions imposed by Doordarshan is part of the fundamental right under Article 19(1)(a) of the Constitution. It can be curtailed only by "reasonable restrictions" imposed by the state under Article 19(2). The right is similar to the right of the citizen to publish his views through newspapers, advertisements and the like.

The producer had denied that the telecast would affect prejudicially the well-being of the people. The authorities asserted that the serial had gone through the prescribed procedure. Therefore, the high court should not have stopped the telecast, the Supreme Court said. The organisations had not shown any material to show that the serial was prejudicial to the community. Therefore, the high court order violated the right of the producer and was set aside.

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57. Judges: E.S. Venkataramaiah and N.D. Ojha.
AIR 1988 SC 1642.

58. NUCLEAR-DAMAGED FOOD SOLD

Shivrao wagle vs. Union of India

This case involves scientific data, like that of Vincent Panikulangara (54). The court says that judicial proceeding is not an appropriate one for determination of such matters.

Facts: India imported 7,500 cartons of Irish butter under the EEC grants-in-aid for Operation Flood Programme. The National Dairy Development Board supplied it to the Greater Bombay Milk Scheme. Since the Chernobyl nuclear disaster happened during that period, the petitioner moved the Bombay High Court alleging that the butter was contaminated by radioactive substances and therefore should not be distributed to the public. The high court dismissed the petition, saying that the best scientific brain available in the country (Bhabha Atomic Research Centre) has examined the butter in the laboratory and declared it to be safe. Therefore, an appeal was filed in the Supreme Court.

Ruling: The Supreme Court appointed an expert committee to examine whether the dairy products were harmless for human consumption. It cleared the stuff. The petitioner had pointed out that different countries have different levels of permissible radio-activity in their foodstuff. They also showed letters from world famous scientists, including Nobel laureates, who thought it was safer to avoid the food products even with low radioactivity. The court held that these statements were general and represented only a particular school of thought. The radioactivity in the butter was much below the permitted level in India. Relying on these factors and the view of the Panikulangara judgement, the court dismissed the appeal. The plea that all food articles using the butter should carry a label "Manufactured out of butter imported from EEC countries" was also rejected.

59. FILM ON COMMUNAL VIOLENCE ALLOWED

Ramesh Chotalal Dalal vs. Union of India

Will the artistic portrayal of communal violence incite further violence or prevent it? The petitioner in this case alleged that it would cause further division in society. The court did not think so and allowed the exhibition of the TV serial on Doordarshan.

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58. Judges: A.P. Sen and L.M. Sharma.
AIR 1988 SC 952.

59. Judges: Sabyasachi Mukharji and S. Ranganathan.
AIR 1988 SC 775.

Facts: The serial "Tamas" was based on a novel written by Bhisham Sahni. It depicted Hindu-Muslim-Sikh tension before the partition of India. The film showed how extremists within the communities provoked violence causing misery to the innocents. When the serial started, one Siddique moved a PIL in the Bombay High Court. The court stayed the telecast at the first hearing. But after the judges watched the whole serial in chambers, the stay was vacated. So Siddique filed an appeal. Meanwhile, Ramesh Dalal also filed a writ petition in the Supreme Court against the serial.

Ruling: The Supreme Court rejected the allegations of the petitioners, based on the episodes and dialogue, that the serial would incite violence. "The attempt of the author of the film is to draw a lesson from our country's past history, expose the motives of persons who operate behind the scenes to generate conflicts and to emphasise the desire of persons to live in amity and the need for them to rise above religious barriers and treat one another with kindness, sympathy and affection. It is possible only for a motion picture to convey such a message in depth and if it is able to do this, it will be an achievement of great social value," the judgement said dismissing the petitions. The high court judgement, which said that the film was "capable of creating a lasting impression of this message of peace and coexistence" was approved.

60. CHILDREN GET SEPARATE JAIL

Sanjay Suri vs. Delhi Administration

Children and hardened criminals are often mixed up in the overcrowded jails all over the country. This brutalises the young offenders. The present case deals with the situation in the Tihar jail and the remedial measures taken by the court are held up as an example to the rest of the country's prisons.

Facts: Two journalists wrote a series of articles in a Delhi newspaper about the plight of the children lodged in the Tihar central jail. Forced to lend free labour to the hardened criminals among whom they were lodged, these children were frequent victims of sexual assaults. The articles also described the general maladministration of the jail. The journalists sent their writings to the court, seeking directions to the Delhi Administration to remedy the situation. The letter was treated as a writ petition. Several

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60. Judges: R.N. Misra and M.M. Dutt.
AIR 1988 SC 414; 1988(Suppl) SCC 160.

orders were passed over a period of four years. The orders and the final judgement are summarised below.

Ruling: The first question which arose in the petition was whether the Supreme Court should entertain it when a similar one was pending in the Delhi High Court. The high court had even passed some directions regarding children in the jail. Normally, the Supreme Court does not take up a matter which is pending in a high court. This judgement would be informative in cases where the same issue is agitated in one or more high courts and the Supreme Court. The judgement explained: "We were anxious to avoid parallel investigation, particularly since in matters of this kind it is desirable that the high courts should be activised. But since no inquiry into the conditions prevailing in the jail, insofar as prisoners in the juvenile ward are concerned, had been ordered and what was ordered (by the high court) was only a limited inquiry relating to medical examination of seven juvenile prisoners who are directed to be produced in court, we thought we would be failing in our constitutional duty if we do not take judicial action and direct the district judge to visit the jail for making inquiry into the conditions prevailing in the jail in so far as the prisoners in the juvenile ward are concerned..." Thus, the judgement is a precedent for taking a complaint to the Supreme Court, even while it is being heard in a high court.

The first thing the Supreme Court did, after accepting the letter petition from the journalists, was to ask the district judge to hold an inquiry. The judge's report confirmed the serious allegations made by the journalists. Since some of the undertrial children who spoke out about the horrifying conditions in the jail feared reprisals by the authorities, the Supreme Court ordered their immediate release on bail, or on parole in the case of convicted prisoners.

Another important order, made soon after the receipt of the jail report, was to transfer immediately a jail official who was found to be particularly vicious. The court said: "In any other jail to which he is transferred, it will be ensured that he does not have anything to do at all with juvenile prisoners. The superintendent will take steps to ensure that he is not allowed any access to the juvenile ward and is also not allowed to come into contact in any manner whatsoever with the prisoners in the juvenile ward." Another warder was ordered to be suspended immediately. It was also ordered that no juvenile prisoner should be directed to go to the cell of adult prisoners to do any work for them including cooking or cleaning. In another order, the court released 131 undertrial prisoners on bail on the principles laid down earlier in the Hussainara Khatoon cases.

Following the continuous watch kept on the jail by the Supreme Court, the youth were kept in a separate jail from then onwards. A separate jail was built and put under the control of a superior officer.

"Monitoring the affairs of a jail is a difficult job for this court, but on account of the fact that the Tihar jail is in the capital and on account of the advantages of publicity available through the media and otherwise, the affairs of the jail have received due publicity over the last four years," the judgement remarked.

The court had called for suggestions for improvement of the conditions of the jail from all parties in the litigation. Several suggestions were made by the petitioners' counsels and the additional solicitor general. The court then adopted some of them and passed directions. Among them:

* the workload of superintendence should be distributed in a graded way among the officers. The jail inmates should be taught the essence of all religions, that is, humanism.
* the visitors' board should consist of cross-sections of society social activists, people connected with the news media, woman social workers, jurists and retired judicial officers.
* the warrant of custody sent by the magistrate should mention the age of the detenu; otherwise it should not be accepted by the jail authorities.
* juvenile prisoners should not be allotted work in the same area where regular prisoners are made to work. Care should be taken to ensure that there is no scope for their meeting and having contacts.
* warders should be shifted every three years.
* overcrowding in jail (in this case 4,000 in place of 2023) should be minimised by building new jails.

With these directions the case was disposed of. This case was not meant to improve only the Tihar jail; it was treated as a model for other jails too. Even the litigation is a model for activists in other states, where the high courts may be asked to follow the path set by the Supreme Court.

61. CITIZEN AGAINST MUNICIPALITIES

M.C. Mehta vs. Union of India

This is the second of the orders passed on the petition filed by lawyer M.C. Mehta on the pollution of the Ganga by industrial units in Kanpur. This order is significant in that it expands the *locus standi* of petitioners in public interest cases against negligent municipalities. It also outlines the duties of municipal corporations to protect water resources and urges high courts to be cautious in staying criminal proceedings initiated by pollution control boards against erring industrial units.

Facts: The petitioner had complained that the industries were polluting the Ganga and the municipalities were not taking adequate steps to stop them. The court, in its first order (56) dealt with the industrial units. In this order, it deals exclusively with the Kanpur municipal corporation, which is one of the biggest cities on the river banks. Every day 274 million litres of sewage is discharged into the river from the city. Kanpur was the second highest polluter of the river after Calcutta, which discharged 580 million litres a day. The Kanpur corporation authorities admitted that the river was being polluted, among other factors, by 16 drainages carrying textile and tannery wastes and night soil, 80,000 cattle, dhobi ghats and defecation by the poor.

Ruling: The municipal corporation had argued that the petitioner had no *locus standi* as he had no property or interest along the river. The court rejected this argument and expanded the *locus standi* of such public spirited persons. It said that in the common law developed in England, only an owner of land along the river could bring such case. But it is no longer the case. Here is a person interested in protecting the lives of the people who use the water. His right to maintain the petition cannot be disputed. The nuisance caused by the pollution is a public nuisance, which is widespread in range and indiscriminate in its effect. It would not be reasonable to expect any particular person to take proceedings to stop it as distinct from the community at large. The petition has been entertained as a public interest litigation. On the facts and circumstances of the case, the petitioner is entitled to move the Supreme Court in order to enforce the statutory provisions which impose duties on the municipal authorities and the pollution boards.

The court stated that the Kanpur corporation must bear a major responsibility for the Ganga pollution. It asked the corporation to submit

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61. Judges: E.S. Venkataramaiah and K.N. Singh.
AIR 1988 SC 1115; (1988)1 SCC 471.

within six months a plan to control the problem to the Water Pollution Board. The court also asked the authorities to shift the dairies outside the city. It further asked the corporation to lay sewerage line where it is not there and expand the lines where they are inadequate. Among other directions, the court also asked the authorities to build public toilets and to stop the throwing of dead bodies or half-burnt bodies into the river. Licences to new industries should not be given unless they make provisions for treating the effluents.

The same order was made applicable to all municipal authorities along the Ganga.

The Supreme Court asked the high courts not to grant stay of criminal proceedings in cases initiated by the pollution control boards against industrial units. In extraordinary cases, they may do so but then the cases must be disposed of within two months. This will prevent the industrial units from taking undue advantage by getting stay orders.

Further, the Supreme Court asked the Central Government to direct all eudcational institutions to teach the importance of environment at least one hour in a week. The Central Government shall get textbooks written for this purpose and distribute them to educational institutions free of cost. Training of teachers for this purpose and introduction of short-term courses for such training throughout India are some other directions. It also pointed out the desirability of organising "keep city clean" and "keep the village clean" campaigns at least once a year.

62. STRANGE CASE OF A FRUSTRATED PETITIONER

Sheela Barse vs. Union of India

Those who conduct public interest cases may often feel frustrated by the delays caused by frequent adjournments, unhelpful attitude of the authorities and counsels and several other factors which slow down the mill of justice. This is such a case in which the petitioner, a writer, exhausted by the slow progress of her case about children in jails all over the country, tried to "speak out" her mind about the judiciary and "walk out" of the Supreme Court. This extraordinary situation gave an occasion for the judges to explain their viewpoint on the conduct of public interest cases. They gave answers to the petitioner's allegations about the judiciary, which are educative. She was not allowed to withdraw her case but she was

62. Judges: R.N. Misra and M.N. Venkatachaliah.
1988(1) SCR 210; (1988)4 SCC 226.

allowed to withdraw from the case. The case was then handed over to the Supreme Court Legal Aid Committee. As this case deals with several aspects of public interest litigation, the judgement is dealt with in detail here.

Facts: The main writ petition pointed out to the court the plight of children lodged in jails. It said that their rights were being violated by the authorities who ignore the legal provisions regarding custody of children. The court had issued notices to all states and called for reports from all district jails. The case was to be finally disposed of in 1986. But it was not heard until 1988. Disgusted with the delay, the petitioner filed an application seeking to withdraw the case from the court. She stated that the court had become "dysfunctional." The unjustified adjournments obtained by the states and the inability of the court to enforce its orders showed the functional deficiencies of the court. She elaborated: "The then Chief Justice of India who was the presiding judge of the bench fixed December 9, 1986 as the date for delivering the final judgement. But the CJ absented himself from the court for three days to attend an international judges' meet he had convened. On December 13, 1986, an hour and half after opening of the court, the then CJ informed the petitioner that he would not be in court that afternoon; hence there can be no final hearing as scheduled. The petitioner understands that the CJ had to inaugurate some chambers and the date had been fixed in advance."

In view of this situation, she wanted to withdraw the case from the court. She asserted that since she instituted the case, she could withdraw it and none else could take it over. She also stated that she was disabled from conducting the case with "dignity" as certain happenings in the court had tended to cast a slur on her integrity and dignity.

Ruling: Faced with such serious allegations, the judges found it necessary to write a long judgement explaining their viewpoint on the vital issues raised by the petitioner. As a writer, she had put forward the shortcomings of the judiciary in strong and abrasive language. Many of those who have conducted PIL would sympathise with her. The two judges who delivered this judgement also have been developing PIL for quite some years. Therefore, this confrontation between the protagonists of PIL is very informative and is an important reading for social workers. Therefore, it is reproduced here at great length.

"The grievance is that the final disposal of the main petition was not expeditiously done. In a public interest litigation, unlike traditional dis-

pute resolution mechanism, there is no determination or adjudication of individual rights. While in the ordinary conventional adjudications the party structure is merely bi-polar and the controversy pertains to the determination of the legal consequences of past events and the remedy is essentially linked to and limited by the logic of the array of the parties, in a public interest action the proceedings cut across and transcend these traditionl forms and inhibitions. The compulsion for the judicial innovation of the technique of a public interest action is the constitutional promise of a social and economic transformation to usher in an egalitarian social order and a welfare state. Effective solutions to the problems peculiar to this transformation are not available in the traditional judicial system. The proceedings in a public interest litigation are, therefore, intended to vindicate and effectuate the public interest by prevention of violation of the rights, constitutional or statutory, of sizeable segments of the society, which owing to poverty, ignorance, social and economic disadvantages cannot themselves assert—and quite often not even aware of—those rights. The technique of public interest litigation serves to provide an effective remedy to enforce these group rights and interests. In order that these public causes are brought before the courts, the procedural techniques judicially innovated specially for the public interest action recognise the concomitant need to lower the *locus standi* thresholds so as to enable public-minded citizens or social action groups to act as conduits between these classes of persons of inherence and the forum for the assertion and enforcement of their rights. The dispute is not comparable to one between private parties with the result there is no recognition of the status of a *dominus litis* for any individual or group of individuals to determine the course or destination of the proceedings, except to the extent recognised and permitted by the court. The "rights" of those who bring the action on behalf of the others must necessarily be subordinate to the "interests" of those for whose benefit the action is brought. The grievance in a public interest action, generally speaking, is about the content and conduct of government action in relation to the constitutional or statutory rights of segments of society and in certain circumstances the conduct of government policies. Necessarily, both the party structure and the matters in controversy are sprawling and amorphous, to be defined and adjusted or readjusted as the case may be, ad hoc, according as the exigencies of the emerging situations. The proceedings do not partake of predetermined private law litigation models but are exogenously determined by variations of the theme.

"Again, the relief to be granted looks to the future and is, generally, corrective rather than compensatory which, sometimes, it also is. The pattern of relief need not necessarily be derived logically from the rights asserted or found. More importantly, the court is not merely a passive, disinterested umpire or onlooker, but has a more dynamic and positive role with the responsibility for the organisation of the proceedings, moulding of the relief and—this is important—also supervising the implementation thereof. The court is entitled to and often does seek the assistance of expert panels: commissioners, advisory committee etc. This wide range of the responsibilities necessarily implies correspondingly higher measure of control over the parties, the subject matter and the procedure. Indeed as the relief is positive and implies affirmative action the decisions are not "one-shot" determinations but have ongoing implications. Remedy is both imposed, negotiated or quasi-negotiated.

"Therefore, what corresponds to the stage of final disposal in an ordinary litigation is only a stage in the proceedings. There is no formal, declared termination of the proceedings. The lowering of *locus standi* threshold does not involve the recognition or creation of any vested rights on the part of those who initiate the proceedings, analogous to *dominus litis*.

"The theme, implicit in the applicant's hyper-articulated grievance, is that this court has not shown adequate concern for justice in this case. Is this justified? The record of the proceedings show that even by November 1986, directions of far-reaching effect had been issued and very significant exercises had been initiated. The grievance, in the ultimate analysis, is really in the area of non-compliance by the several states and its authorities with the order and directions issued by the court from time to time in the proceedings.

"It is true that with the active and willing co-operation of the respective states, the progress made in the proceedings would have been far more substantial. It is also true that several of the states and the authorities have not, prima facie, realised the seriousness and the magnitude of the problem. Some states pleaded financial constraints in implementing the directions.

"Even so, unduly harsh and coercive measures against the states and the authorities might themselves become counter-productive. In the matter of affirmative action the willing co-operation of the authorities must, as far as possible, be explored. If the proceedings are allowed to be diverted

at every stage into punitive proceedings for non-compliance, the main concern and purpose of the proceedings might tend to be overshadowed by its incidental ramifications. The coercive action would, of course, have to be initiated if persuasion fails. We are dealing with a large number of states and authorities. There are 32 respondents, 429 districts in which reports of the district judges have been called for and nearly 400 of them have submitted their reports. There are innumerable jails, sub-jails, remand homes, custodial institutions etc. This court issued notice to the home secretaries of the states to file their reply by July 15, 1988 finally.

"The applicant has complained that 'the non-participation of counsel has assumed focal importance to the case' and has also aired a grievance about the 'court's overwhelming use of discretionary powers to accommodate everyone except the petitioner.' The point to note is that learned counsel for the respondent-states and the applicant are not in the same position. The former were accountable to the court to report compliance by their respective client-states with the directions issued by the court. Learned counsel appeared to have sought extensions of time. Their request might or might not have been made with perfect justification. Grant of their request does not amount to discriminatory treatment meted out to the applicant who was not in any such position representing any party who was required to report compliance with the court's directions. The two are not comparable positions. Indeed, in January 1988, the case appears to have been adjourned for about six weeks on grounds of ill-health of the applicant herself. While we understand the concern of the applicant in regard to the delays occasioned, we are unable to appreciate the unconcealed, cynical scorn the applicant has permitted herself to exhibit towards the process of this court. Instead of sustaining and strengthening the process of this court in what is clearly a sensitive and difficult task of some importance and magnitude, the applicant has chosen to give herself the role of a self-appointed invigilator and has made a generous use of that position by her barbed quips and trenchant comments against the court. By this, we think, she has done no service either to herself or to the cause she sought to serve. Scornful impatience can also wreck a mission.

"The attitude of the applicant is perhaps conditioned and influenced by her own perceptions of what she considers to be the real and larger issues—apart from the immediate problems of the case—involved in the proceedings. Applicant says: Therefore, it is important to establish principles of accountability of the Government of India, the states and the judiciary. In the last analysis, both the dignity of the court, the honour of

the institution of judiciary and the effectiveness of judicial process are at stake.

"We are afraid, the references to judicial accountability, having regard to the specific context in which they are made, really mean no more than that the proceedings are to be conducted in conformity with the standards of promptitude and dispatch of which the applicant chooses to constitute herself the judge, to sit in judgement over the alleged shortcomings in that behalf. The concept of public accountability of the judicial system is, indeed, a matter of vital public concern for debate and evaluation at a different plane. All social and political institutions are under massive challenges and pressures of reassessment of their relevance and utility. Judicial institutions are no exception. The justification for all public institutions are related to and limited by their social relevance, professional competence and ability to promote the common weal. There is no denying that a debate is necessary and, perhaps, is overdue.

"But, for that reason courts of law in their actual day-to-day judicial work, cannot allow the incantations and professions of these principles to enable parties to judicial adjudications to constitute themselves the overseers of the judicial performance and accountability in the individual case in which they are immediately concerned and permit themselves comments and criticism of the judicial work in the particular case. The application and its annexures are replete with statements intended to demonstrate the inefficacy of the proceedings before this court, disclosing a cynical distrust of its utility and effectiveness. Indeed, while comments or criticisms of judicial functioning, on matters of principle, are healthy aids for introspection and improvement, the criticism of the functioning of the court in the course of and in relation to a particular proceeding by the parties to it borders on a conduct intended or tending to impair the dignity, authority and the functional disposition of the court.

"This is not to deny the broader right to criticise the systemic inadequacies in the larger public interest. It is the privileged right of the Indian citizen to believe what he considers to be true and to speak out his mind, though not, perhaps, always with the best of tastes; and speak perhaps, with greater courage than care for exactitude. Judiciary is not exempt from such criticism. Judicial institutions are, and should be made, of stronger stuff intended to endure and thrive even in such hardy climate. But we find no justification to the resort to this freedom and privilege to criticise the proceedings during their pendency by persons who are parties and participants therein.

"The first ground, therefore, does not justify the withdrawal of this public interest litigation. If we acknowledge any such status of a *dominus litis* to a person who brings a public interest litigation, we will render the proceedings in public interest litigation vulnerable to and susceptible of a new dimension which might, in conceivable cases, be used by persons for personal ends resulting in prejudice to the public weal.

"The second ground for withdrawal is no better. The ground is that the applicant, in view of what transpired in the two immediately preceding dates of hearing of the case, is unable to prosecute the proceedings with 'dignity' and that, therefore, the applicant is entitled to withdraw the proceedings. There is, and can be, no disagreement with the principle that even the humblest citizen of the land, irrespective of his station in life, is entitled to present his case with dignity and is entitled to be heard with courtesy and sympathy. Courts are meant for, and are sustained by, the people and no litigant can be allowed to be looked upon as a supplicant or an importuner. It is unfortunate that the applicant claims that there was any shortcoming in this behalf in her case. We regret that there should at all have been any occasion for this. Let us see whether there is any real justification for this."

The judges then narrated the controversial incidents which happened in court, the exchanges between the petitioner, the counsels and the court. According to the judges, the petitioner had misunderstood the proceedings. They remarked in conclusion: "Frankly, we are unable to unravel the purpose of this predisposition to, and determination on her part to misunderstand."

"The third ground is that the proceedings are brought as a 'voluntary action' and that applicant is entitled to sustain her right to be the 'petitioner-in-person' in a public interest litigation and that the proceedings cannot be proceeded with after delinking her from the proceedings. This again proceeds on certain fallacies as to the rights of a person who brings a public interest litigation. Any recognition of any such vested right in the persons who initiate such proceedings is to introduce a new and potentially harmful element in the judicial administration of this form of public law remedy. That apart, what is implicit in the assertion of the applicant is the appropriation to herself of the right and wisdom to determine the course the proceedings are to or should take and its pattern. This cannot be recognised. In the present proceedings the court has already gone through and has initiated an elaborate exercise as indicated in the orders excerpted earlier. The petition cannot be permitted to be abandoned at this stage. Only a private litigant can abandon his claims.

"Though the main prayer is one for the withdrawal of the petition, in the written submissions, however, the applicant seems to strike a different note and seeks to participate in the proceeding subject to certain conditions. No litigant can be permitted to stipulate conditions with the court for the continuance of his or her participation."

The court also forbid the petitioner from using the information collected by her during her visits to jails and other custodial institutions pursuant to the court's order (for other purposes e.g. writing in newspapers or books). The court explained that permission could not be granted during the pendency of the proceedings as the information was gathered for the purposes of the case and pursuant to the court's directions.

Ultimately, the petitioner's name was deleted from the case, and the name of the Supreme Court Legal Aid Committee was substituted in that place.

63. WOMEN MOVE AGAINST GLORIFICATION OF SATI

All India Democratic Women's Association vs. Union of India

Reports of sati (burning of widow on the funeral pyre of her husband) in some parts of Rajasthan provoked nation-wide debate in 1986. The Central Government then enacted the Commission of Sati(Prevention) Act to ban the glorification of this ancient practice and collection of funds. The All India Democratic Women's Association and Janwadi Samiti, two women's organisations, moved a petition to stop the "chunri" ceremony within Sri Rani Satiji's Mandir in Jhunjhunu district of Rajasthan and fund collection.

Ruling: At the first hearing, the court issued notices to all parties and prohibited the temple authorities from performing the "chunri" ceremony within the temple. It also ordered that the entire money collected should be separately accounted for and deposited in a nationalised bank. The management of the temple then asked the court to vacate the stay and a direction to the district magistrate to return keys and the boxes containing gold and silver articles and not to interfere in the collection of gold, silver and cash. However, the court restraint on the "chunri" ceremony was not lifted. As regards the money deposited in the bank, the court stated that it could be released for the maintenance of the temple. For this, permission

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63. Judges: R.N. Misra and M.N. Venkatachaliah.
AIR 1989 SC 1280; (1989)2 SCC 411.

must be sought from the district magistrate, the Supreme Court said while disposing of the petition.

The question whether "chunri" ceremony amounts to glorification of sati was not decided in this case, but has been left to be argued at a later date. Like many other issues, this has also been forgotten when the public debate subsided.

64. RELIEF FOR BHOPAL GAS VICTIMS

Bhopal Gas Peedit Mahila Udyog Sanghatan vs. Union of India

The Bhopal gas disaster occurred in 1984, but the relief measures were caught in red tape. So a woman's organisation moved this writ petition in 1988 seeking proper distribution of interim relief.

Ruling: There were no legal questions involved in the case. Therefore, there are no long judgements, but only a series of small orders. The petitioners complained about inadequacies in the distribution of interim relief including milk, bread, sugar and edible oils. The court, often a constitution bench itself, passed necessary orders on them. By this process, the Supreme Court has maintained a continuous watch on the relief measures for Bhopal victims. This process went on for years, new judges continuing the monitoring of the relief measures. The petitioners and the court have put some accountability on the authorities, in the absence of which the relief measures would have been even more tardy.

65. DEATHS IN POLICE "ENCOUNTER"

Chaitanya Kalbagh vs. State of U.P.

In the eighties, several persons died in 'encounters' with police in some states. Police maintained that the victims were dacoits or desperate characters who attacked them. On the other hand, human rights activists and newspapers alleged that the police were cooking up 'encounter' stories to eliminate social activists or inconvenient persons. The Supreme Court was reluctant to take affirmative action in this case.

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64. Judges: R.S. Pathak, E.S. Venkataramaiah, R.N. Misra, M.H. Kania and M N. Venkatachaliah.
AIR 1989 SC 1069; (1989)2 SCC 246.

65. Judges: R.S. Pathak and R.N. Misra.
AIR 1989 SC 1452; (1989)2 SCC 314.

Facts: The petitioner, a journalist, wrote about the 'encounter' in U.P. in 1981. He found that in the name of eradicating the menace of dacoits in the state, many innocent people, including Harijans, were being eliminated. He counted at least 299 such innocent persons among the dead. He asked the Supreme Court in a petition that an impartial agency be appointed to investigate into the deaths, with authority to prosecute the police officers found guilty of murder.

A similar petition was filed along with this by Prof. Rajni Kothari alleging that the Tamil Nadu police were killing, through alleged encounters, young activists engaged in rural development, specially of landless labourers. There was also another petition regarding deaths in Andhra Pradesh.

When these petitions came on for hearing, the additional solicitor general took objection arguing that they were not maintainable under Article 32 of the Constitution for the following reasons:

(1) The question whether the encounters were genuine or staged raised complicated issues of fact,

(2) The questions raised were of a political nature,

(3) The fundamental rights of no one have been violated,

(4) The remedy sought could effectively be considered under the Code of Criminal Procedure, and

(5) In any case, it was a matter where the state governments concerned should be first addressed on the question of constituting a commission to enquire into the deaths.

It was further argued that only where the state government unreasonably declined to entertain the representations, the Supreme Court's jurisdiction should be invoked.

Ruling: The court felt that the matters raised in the petitions properly fall within the domain of the state government. Those governments should be petitioned in the first instance. Therefore, the court asked the petitioners to petition the governments within one month. It asked the governments to dispose of them within three months thereafter.

66. MORE ON CHILDREN IN JAILS

Supreme Court Legal Aid Committee vs. Union of India

This is the continuation of the case regarding children lodged in jails, originally filed by journalist Sheela Barse (62). After deleting her name as petitioner, the Supreme Court Legal Aid Committee took it over. This is an order passed after Sheela Barse, in which the court attempts to continue the crusade.

Ruling: The court had conducted a survey in 1986 of the number of children in jails by asking all district judges to send data. By 1988, the modern Juvenile Justice Act had replaced the old Children Act. The new Act provides for the setting up of juvenile houses, special homes and observation homes by state governments. The court felt that in this back-drop it was necessary to get fresh data from the districts. Apart from data on the children, the court now sought details on whether the juvenile courts have been set up as required by the new law and whether the homes for children have been established.

In the new setting, the court felt that "the matter perhaps requires overseeing by the court." This was a rare affirmative statement to come from the court. "For coordination between authorities within the state, at the initial stage and it would be in the interest of children that the matter is overseen by this court and when the machinery is properly geared, the responsibility of overseeing may be entrusted to the respective high courts." The court is normally not expected to undertake such function.

"With a view to working out the modality and to make overseeing convenient," the court set up a committee of lawyers to draw up a scheme.

The court, after examining the data from different jails, found insufficient details from Bihar. So it appointed an advocate as commission to visit three jails there and report to the court.

In order to meet the expenses in conducting the case the court asked the governments at the Centre, Bihar, U.P. and West Bengal to deposit certain sums in the registry.

Orders continued to be passed in this case on several later occasions. On 9/5/1989, the court expressed satisfaction that all states lodged young offenders in separate jails, away from the regular ones. Their number had

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66. Judges: R.N. Misra and M.N. Venkatachaliah.
AIR 1989 SC 1278; (1989)2 SCC 325.

also gone down as each case had been scrutinised and bail had been granted according to the earlier directions of the Supreme Court.

A draft scheme for monitoring the implementation of the Juvenile Justice Act was presented to the court according to its earlier direction and was circulated to all parties for suggestions.

The court then gave further directions to the state to establish the required number of institutions for young offenders as prescribed in the Act, and appointment of requisite number of probation officers. Every state and union territory was asked to file compliance report within a specific period.

On 5/9/1989 the court asked all states to set up advisory boards under the Act within six weeks. They should have 15 to 20 members, including social workers apart from members of legislatures, parliament, representatives of the law and social welfare ministries and the police. The states were asked to file compliance reports within two months.

67. EYES LOST BY MEDICAL NEGLIGENCE

A.S. Mittal vs. State of U.P.

This is a case where a free medical camp turned into a disaster due to the negligence of the doctors. The judgement deals with the liability of doctors for the damage caused by their negligence and compensation whether payable under such circumstances.

Facts: The Lions Club at Khurja in U.P. organised, as part of its social service programme, an eye camp for the citizens. The club invited a team of eye surgeons from Rajasthan to offer their services. They operated upon the eyes of 108 patients, 88 of them for cataract, which was considered to be low-risk surgery. Though the intention was laudable, the programme proved a "disastrous medical misadventure" for the patients. Eightyfour patients lost their eyesight. The story repeated itself at another camp in Moradabad. Two social activists filed a public interest petition. The Supreme Court issued notices to the U.P. Government, the medical officers, the Lions Club, the Central Government and the Indian Medical Council.

The petitioners alleged motives of monetary gains against the organisers in terms of state and international subsidies. They asked for

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67. Judges: R.N. Misra and M.N. Venkatachaliah.
AIR 1989 SC 1570; (1989)3 SCC 223.

rehabilitation of the victims and appropriate compensation, an inquiry into the cause of the tragedy, laying down of guidelines to prevent such mishaps in future, action against the doctors and the authorities who sanctioned such medical camp. The state government had meanwhile ordered two inquiries and their reports were before the Supreme Court. Criminal cases were filed against the doctors for negligence.

Ruling: The Supreme Court did not go deep into the question of negligence of the doctors involved as that had to be decided by the trial court. It merely reiterated the law that a mistake by a medical practitioner which no reasonably competent and careful practitioner would have committed would be a negligent one. The Supreme Court considered only two questions: (a) whether the guidelines issued by the Central Government prescribing norms and conditions for the conduct of eye camps are sufficiently comprehensive, and (b) what relief, monetary or otherwise, should be afforded to the victims? Regarding the guidelines, the court noted that the Central Government had revised the guidelines in the wake of the Khurja catastrophe and with a few modification, they would be satisfactory.

Regarding compensation, it was argued for the petitioners that the state must be held liable as the eye camp was held "pursuant to and under the authority of the government." The court, however, rejected the doctrine of vicarious liability of the state as the present petition had limited scope. The state government had submitted that it was not taking an adversary posture but is participating in the litigation in the spirit of exploring relief to the victims. The court stated that the facts have to be established by the criminal court.

But, on humanitarian consideration, the court directed the state government to pay to each victim Rs. 12,500 in addition to Rs. 5,000 already paid. The amount shall be deposited within two months with the district magistrate and he shall distribute it within two months. It may be noted that the amount is not compensation under law, but merely on humanitarian considerations. Therefore, this is not a legally binding judgement; though it may have force in similar cirucmstances.

68. MISMANAGEMENT OF MENTAL HOSPITAL

B.R. Kapoor vs. Union of India

This case related to the abominable conditions in the Shahdara mental hospital run by the Delhi Administration. There were no basic amenities, medical care, or separation of criminal lunatics and others. This situation was brought before the court by a social activist.

Ruling: The court at first appointed an expert committee of four psychiatrists to visit and ascertain the conditions there. The committee submitted a three-volume report on all aspects. Confirming most allegations made in the petition, it suggested 35 remedial steps regarding admission to the hospital, treatment and discharge of patients, constitution of board of visitors, sanitary conditions, food and kitchen, staffing pattern, ill-treatment of patients by staff, attempts to commit suicide, deaths in the hospital and availability of emergency medical care. The court asked the Delhi Administration to rectify the defects pointed out, but it was "very slow" in responding to the matter and took three years to file its reply to the court. The authorities claimed that most suggestions have been carried out and some others are being implemented.

The court recommended to the Central Government to take over the hospital from the Delhi Administration in view of the fact that it is in the capital. The court asked the government to run it on the model of NIMHANS at Bangalore, after providing it more funds and modern facilities. It could be attached to a teaching institution which has post-graduate specialisation in psychiatry.

69. MEDICAL CARE FOR ACCIDENT VICTIMS

Parmanand Katra vs. Union of India

When an accident occurs on the road, some people hesitate to take the victims to a doctor or hospital as it would involve legal complications. The doctors also have some confusion about their primary duties when an accident victim is brought to them. Should the police be informed first? The police also create complications by raising objections to a particular clinic treating the victim. The accident occurred within one police station area and therefore the treatment should be given within that jurisdiction.

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68. (1989)3 SCC 387.

69. Judges: R.N. Misra and G.L. Oza.
AIR 1989 SC 2039; (1989)4 SCC 286.

Good Samaritans and doctors stand confused while the police quote the laws and rules till the victim dies of neglect. The present case deals with this problem. (The new Motor Vehicles Act 1988 has made it clear that it is medical care first and legal formalities later).

Facts: A lawyer, Parmanand Katra, of Delhi filed this public interest petition asking for a direction to the Central Government that every injured person brought for treatment should be given medical aid immediately to preserve life and thereafter the procedural criminal law should be allowed to operate in order to avoid negligent death. In the event of breach of this direction, apart from any action that may be taken for negligence, appropriate compensation should be given.

The petition appended a news report in which a person took an injured scooterist to the nearest hospital, only to be told that the victim should be taken to another hospital 20 km away, as that was the one authorised to handle medico-legal case. While the scooterist was being taken there, he died.

The Supreme Court issued notices to the Union Health Secretary, the Medical Council of India and the Indian Medical Association. There were no two opinions on the importance of giving urgent medical care to the accident victims. Several committees and conferences of these bodies had already discussed and took decisions on this question. The Code of Ethics drawn up by the Medical Council has stressed the duty of the doctor to care for a person seeking his help. A committee under the chairmanship of the Director-General of Health Services had laid down that whenever any medico-legal case comes to the hospital, the medical officér on duty should inform the duty constable the name, age and sex of the patient and the place and time of occurrence of the incident, and should start treatment ... full medical report should be prepared and given to the police as soon as examination and treatment of the patient is over. The treatment would not wait for the arrival of the police or completing legal formalities.

Ruling: The court emphasised the duty of doctors in view of Article 21 of the Constitution guaranteeing life and liberty. No law or state action can intervene to avoid or delay this paramount obligation. "The obligation being total, absolute and paramount, laws of procedure which would interfere with the discharge of this obligation cannot be sustained and must, therefore, give way."

Every doctor must be reminded of his obligation and assured that he does not contravene law by proceeding to treat an injured person brought

to him. "We must make it clear that zonal regulations and classifications cannot also operate as fetters in the process of discharge of the obligation and irrespective of the fact whether under instructions or rules the victim has to be sent elsewhere or how the police shall be contacted, the guideline indicated that the 1985 decision of the committee is to become operative."

The court, to give publicity to this judgement, directed the TV and radio to broadcast the decision. The court also asked the registry to send copies of the judgement to all high courts which will in turn forward it to district judges. They shall give due publicity to the judgement in their respective districts so that citizens and doctors are aware of their obligations.

There were two judges who heard the case. The ruling summarised so far was written by Justice R.N. Misra. The other judge, Justice G.L. Oza, while agreeing with his brother-judge, added another important point. Many doctors hesitate to take up injury cases fearing harassment by the police, lawyers and the courts for evidence. The judgement said that this apprehension, even if they have some foundation, should not prevent them from performing their duty. The court asked the police, the lawyers and judges and everyone concerned not to harass doctors for interrogation, cross-examination and formalities. Even when they have to be called, care should be taken to see that they are not made to wait and waste time unnecessarily.

70. DAMAGES FOR POLICE ATROCITIES

People's Union for Democratic Rights vs. Police Commissioner, Delhi

In an earlier case, Sebastian Hongary (30), we have seen how the death of two persons as a result of army atrocities was compensated on a public interest petition by a college student. This case refers to death and humiliation suffered by some persons at the instance of Delhi Police. The court ordered payment of compensation, though the amounts were ridiculously low. But the principle of compensation for atrocities committed by the uniformed men was once again asserted by the Supreme Court. Such cases can now be cited before the courts to get compensation in similar circumstances, and such circumstances arise not infrequently in our country.

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70. Judges: G.L. Oza and K.N. Saikia.
(1989)4 SCC 730.

Facts: The People's Union for Democratic Rights filed this writ petition on behalf of some poor people who were collected by the police and taken to the police station to do some work. They were forced to work without wages but when they asked for wages, they were beaten up resulting in the death of one whose body was disposed of. A woman was stripped and thrashed inside the police station. Eight others were also beaten up.

When notice was issued to the police, the deputy commissioner admitted the atrocities. The station house officer had been arrested. Further investigation was on, the deputy commissioner stated.

Ruling: The family of the dead person was awarded Rs. 50,000 as compensation. It was ordered to be invested in some scheme under LIC so that the destitute family get some amount monthly. The woman who suffered in the police station was granted Rs. 500. The others got Rs. 25 each from the court. It was further directed that after investigation and identification of the guilty policemen, the amount of compensation could be recovered from them.

It was made further clear that the Supreme Court order did not prevent any other lawful claim for compensation. This is because the victims have a right in law to get full and adequate compensation for their suffering from a civil court. But this remedy is hardly pursued in this country due to ignorance of law, the high cost of civil litigation and delay in the courts.

71. WAITING IN THE DEATH ROW

Madhu Mehta vs. Union of India

A prisoner condemned to death suffers acute mental agony. So if he is kept in the death row for far too long, it would amount to excessive and unreasonable punishment. This has been held to be unconstitutional and violative of Article 21 (right to life and liberty). The importance of the present case is that a public interest organisation, Hindustan Andolan, through its president, Mr. Madhu Mehta, took up an individual case and got the death sentence reduced to life imprisonment. Condemned prisoners have occasionally been found to be languishing in the death rows as they have no legal assistance.

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71. Judges: Sabyasachi Mukherji and B.C. Ray.
AIR 1989 SC 2299; (1989)4 SCC 62.

Facts: The properties of two persons were attached and sold in an auction sale under court orders for realising arrears of land revenue. Enraged by this, the court officer who conducted the auction was waylaid the same evening and his throat was cut. The two accused were condemned to death in 1981 and 1985. The mercy petition of one of them had been rejected, while the other's was pending disposal before the President. Meanwhile, the mental state of the latter had deteriorated so much that the sessions judge who visited the jail reported to the Inspector General of Prisons that the prisoner might attempt suicide by banging his head on the iron grill of his cell. The I.G., therefore, sent an official to Delhi to speed up the case. It was at this stage that Hindustan Andolan filed this writ petition on behalf of the prisoner.

Ruling: The court held that it was well-settled in law that undue, long delay in the execution of death sentence would entitle a condemned prisoner to invoke Article 21 which guarantees speedy trial. In this case, there was no reason sufficiently commensurate to justify the long delay of over eight years in disposal of the mercy petition. The time and the manner in which the mercy petition had been dealt with made sad reading and spoke of the deplorable lack of speed and promptitude which should have been there, the Supreme Court said. As between funeral fire and mental worry, it is the latter which is more devastating, for, funeral fire burns only over the dead body while mental worry burns the living one. With these observations (reiterated from an earlier death sentence judgement), the court altered the extreme penalty to one of life imprisonment.

72. CURING ILLS OF A MENTAL HOME

Rakesh Chandra Narayan vs. State of Bihar

This case is about the pathetic conditions in the Ranchi mental hospital in Bihar and the state government's neglect towards it. The court directed inquiry into the state of affairs and took several remedial steps like appointment of a management committee.

Facts: Two citizens of Patna wrote a letter to the Chief Justice of India in regard to the mental hospital. The court turned it into a writ petition, issued notice to the government and asked a magistrate to report to the court after visiting the asylum. The hospital was run by the Bihar Health Department with financial aid from West Bengal and Orissa. The

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72. Judges: R.N. Misra and M.N. Venkatachalia.
AIR 1989 SC 348; 1989 (Suppl)1 SCC 644.

magistrate's report confirmed most of the allegations made in the petition about the conditions in the asylum. There was acute water shortage. None of the toilets was in order. Therefore, the patients went to nearby open fields. The only fan in working condition was the one above the superintendent. Though electric connection was provided, there was no light at night. Iron cots, provided in 1925, were broken; there were only 300 such for 1,580 patients. Since there were no doors or windows in working condition, the broken cots were used to block patients running away. Many patients had no clothes to wear, so were naked. They were sanctioned food worth Rs 3 a day per head. There was no account of medicines. Medical equipment did not work. Persons who were cured were kept there for three or four decades. The magistrate's report drew a savage picture of the state of affairs. The judgement remarked: "From all accounts, perhaps, many of the zoos housing animals have better conditions than those that prevail in this hospital. The report gives the reader the feeling of a medieval torture house."

Ruling: The court asked the state health secretary to put forth a definite scheme for improving the conditions. He filed a statement saying that the government was aware of the conditions prevailing in the asylum and was discussing measures to improve them. He stated the steps being taken to remedy each defect pointed out in the magistrate's report.

The court passed several directions during the course of two years. It raised the food allowance to Rs.10 per head, ordered immediate water supply, restoration of sanitary facilities, provision of mattresses and blankets, appointment of psychiatrists and scrapping of ceiling for cost of medicines.

The chief judicial magistrate was told to visit the asylum every three weeks to see whether these orders were being implemented.

The mental home was being funded by the Bihar, West Bengal and Orissa governments. West Bengal was not paying its share for its upkeep. On notice from the court, it cleared the arrears.

However, the petitioners complained that the authorities were not complying with the court orders. The food allowance was raised only to Rs. 7 per head, and ceiling of Rs. 2 per head on cost of medicines still prevailed. So the court asked the Chief Secretary of Bihar to "personally look into the matter" and send a report within a month.

The Chief Secretary stated that during his visit proper food and medicines were being distributed. His report did not cover all aspects.

The court criticised his report and remarked that in spite of its orders and the government's assurances, the defects were not being remedied. The scheme given by the government was "half-hearted," it said. In those circumstances, it added, "it becomes difficult for the court with any sense of confidence to leave the management to the health department of Bihar." While acknowledging that it was difficult to monitor the management of the hospital from Delhi, it did not want to let go at that stage. So it appointed a 10-member committee headed by a Patna High Court judge and consisting of top officials from the three states. The court also laid down the modalities of its functioning. It was asked to change the Ranchi home on the model of NIMHANS at Bangalore. The states were allotted the funds they should contribute to the renovation. The committee was asked to set up a rehabilitation centre immediately to take care of cured patients who were not claimed by their families.

The parties and the committees were given liberty to move the court from time to time if any difficulty arose. Further directions were issued in the case later {1991 Suppl(2) SCC 626}.

It was found that diet charges and price of medicines were released at the end of the year. The court directed the health secretary to release them in advance. The water supply was found to be irregular. The court asked the executive engineer to visit the home and rectify it. The building was in a very bad shape. The court asked the government to release Rs. 3 crore for its repair and put an engineer of PWD in charge to look after the work.

73. SETTLEMENT OF RETIRED DEFENCE PERSONNEL

Assam Rifles Multipurpose Cooperative Society vs. Union of India

Though this case was heard as a public interest petition, it related only to retired defence personnel of the Assam Rifles. They wanted development of a remote area for settlement.

Facts: The petitioner society stated that on the north-eastern exremity of India in Arunachal Pradesh, there was substantial land where retired defence personnel and their families could be settled. About 200 such families went and settled there on the basis of a scheme approved by the Central Government. It was claimed in the petition that the scheme assured them allotment of land, facilities of air travel, loans to develop their

73. Judges: R.S. Pathak and M.H. Kania.
1989 (Suppl)1 SCC 484.

land, supply of essential commodities and basic amenities. But these facilities were not given, according to the petition. The government denied the allegations asserting that funds had been set apart and basic facilities were provided.

Ruling: The court observed that settlement in that region should be encouraged and it was in public interest. It, therefore, directed the government to nominate an authority to look into the scheme and report to the government after hearing the petitioner. The government considered the report and took certain decisions regarding the settlement. The court further passed directions regarding loans, payment of pensions, establishment of schools and grant of domicile certificates.

74. SELLING CHILDREN TO BUY FOOD

Kishen Pattnayak vs. State of Orissa

Starvation death, distress sale of labour and exploitation of landless workers form the subject of this case. In the four years it was before the Supreme Court, the Orissa government was compelled to take several welfare actions.

Facts: Two social and political workers addressed a letter to the Chief Justice of India pointing out the miserable conditions of the people in Kalahandi and Koraput districts of Orissa. It was alleged that the people of Kalahandi, in order to save themselves from starvation deaths, are compelled to subject themselves to distress sale of labour on a large scale resulting in exploitation of landless labourers by the well-to-do landlords. It was further stated that in view of the distress sale of labour and paddy, the small peasants are deprived of the legitimate price of paddy. The poor people were sometimes forced to sell their children. It was prayed that the state government should be directed to take immediate steps to help the people. The Orissa government denied allegations of negligence and callousness of the administration. It asserted that it had implemented social welfare programmes in the area.

Ruling: The Supreme Court asked the district judge of Kalahandi to find out whether social welfare schemes were implemented, as claimed by the government and whether they were adequate. The district judge's report to the Supreme Court denied any starvation death and gave a clean chit to the administration. The petitioners disputed the statements in the

74. Judges: M.M. Dutta and K.N. Saikia.
AIR 1989 SC 677; 1989 (Suppl)1 SCC 258.

report. The court, therefore, did not take into account the district judge's report.

The petitioners had suggested the setting up of a "relief implementation committee" consisting of a majority of social workers drawn from non-political organisations like the Gandhi Peace Foundation. The state government, on the other hand, pointed out the already existing provisions in the Orissa Relief Code relating to starvation deaths. It also revealed that there were district-level natural calamities committees in the affected districts. So a new committee need not be set up. But the official committee consisted of the collector, officials, MLAs and MPs. Therefore, at the request of the petitioners, the court directed the state government to nominate five persons from recognised voluntary organisations like the Gandhi Peace Foundation and Ramakrishna Mission. It shall hold at least one meeting every two months. Their function would not be confined only to cases of starvation deaths, but also welfare of the people. Each affected district thus got separate committees.

75. PRIVATE BATTLES IN PUBLIC GARB

Ramsharan Autyanuprasi vs. Union of India

This is an instance of abuse of public interest litigation for private ends. Therefore, the Supreme Court deprecated the practice. It also found fault with petitioners writing letter-petitions personally addressed to a judge. It should be sent to the court, not to an individual. The judgement is notable for its discussion on public interest litigation. Therefore, the important paragraphs are reproduced in detail.

Facts: Two persons wrote a letter to a Supreme Court judge claiming it to be a public interest litigation. They said that they wanted to bring to the notice of the judge the total disarray caused by the arbitrary and high-handed running of the premier institution of ancient art, culture and history of Rajasthan, namely the Sawai Man Singh II Museum Trust, by its chairman. They narrated the history of the trust and gave their version of the dispute in the trust. According to them the properties of the trust were being frittered away and priceless objects are being lost to the country. So they asked the court to set up a board of trustees barring the then chairman. The Supreme Court initially issued notice to the opposite parties and ordered an injunction restraining the trustees from alienating any assets of

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75. Judges: Sabyasachi Mukharji and S. Ranganathan.
AIR 1989 SC 549; 1989 (Suppl)1 SCC 251.

the museum on a complaint that some valuable items were being clandestinely taken away.

The petitioners argued that their right to life under Article 21 of the Constitution had been infringed. They further drew the attention of the court to Article 49 which cast a duty on the state to protect monuments and objects of historic interest. But the opposite parties contested the allegations made by the petitioners and the court realised that it was all really a dispute between heirs in the royal family.

Ruling: The petition was dismissed with the following remarks:

"We are of the opinion that the petition under Article 32 of the Constitution is not maintainable. On the facts as appearing from the pleadings it cannot be predicated that there is any breach of any fundamental right of the petitioners. We are fortified by this conclusion by the fact that in view of the nature of the allegations made in the present context, it is a case which is more amenable to be proceeded under Sections 37 and 38 of the Rajasthan Public Trust Act, 1959, as amended from time to time. These provisions correspond, more or less, to Sections 91 and 92 of the Code of Civil Procedure.

"It appears to us, further, that it would be highly improper to consider this litigation to be a public interest litigation as it is litigation between the members of the erstwhile Raj family to settle their own scores. It is not *pro bono publico*, for the benefit of the public, but for the benefit of a particular section of people for their personal rights. Hence, the assertion that this dispute is a public interest dispute is wrong. The petitioner has asserted that there is violation of Article 21 of the Constitution, which enshrines protection of life and personal liberty and states that no person shall be deprived of his life or personal liberty save according to the procedure established by law. It is true that life in its expanded horizons today includes all that give meaning to a man's life including his tradition, culture and heritage and potection of that heritage in its full measure would certainly come within the compass of an expanded concept of Article 21 of the Constitution. Yet, when one seeks relief for breach of Article 21, one must confine oneself to some direct, overt and tangible act which threatens the fullness of his life or the lives of others in the community.

"In the instant case the allegations are too vague, too indirect and too tenuous to threaten the quality of life of people at large or any section of the people. The acts complained of resulting in the threats alleged are too

remote, in our opinion, to be amenable under Article 32 of the Constitution. The petitioners further assert that there has been violation of Article 51-A(f) of the Constitution as a duty has been cast on every citizen to value and preserve the rich heritage of our composite culture. Indeed, it is our duty, but the enforcement of that duty by means of a writ under Article 32 of the Constitution, in the facts and circumstances of this case, is not warranted. In this case there was no evdence evidencing that any attempt had been made to ask the state to protect a monument or any application had been made to the state seeking intervention and action.

"In that view of the matter, resort to Article 49 was not just. We think that invocation of the jurisdiction of this court as a public interest litigation, in the background of the allegations made in the petition and in the context of this case, was wholly unjustified. Public interest litigation is an instrument for the administration of justice to be used properly in proper cases. Public interest litigation does not mean settling disputes between individual parties.

"This Court in *Bandhua Mukti Morcha vs. Union of India* (34) dealt with this question and Justice Bhagwati, as the learned Chief Justice then was, observed that public interest litigation is not in the nature of adversary litigation but it is a challenge and an opportunity to the government and its officers to make basic human rights meaningful to the deprived and vulnerable sections of the community and to assure them social, economic and political justice which is the signature tune of our Constitution. He reiterated that the court entertain public interest litigation, not in a cavilling spirit or in a confrontational mood or with a view to tilting at executive authority or seeking to usurp it, but its attempt is only to ensure observance of social and economic rescue programmes, legislative as well as executive, framed for the benefit of the have-nots and the handicapped and to protect them against violation of their basic human rights, which is also the constitutional obligation of the executive. In the same decision it was observed by Justice Pathak, as the learned Chief Justice then was, that public interest litigation in its present form constitutes a new chapter in our judicial system acquiring a significant degree of importance in the jurisprudence practised by our courts. The learned judge deprecated individual communications and suggested that all communications and petitions invoking the jurisdiction of the court, must be addressed to the entire court, that is to say, the Chief Justice and his companion judges. Judged by that standard, this petition does not seek to advance any public right. It seeks to exploit private grievances.

"Indeed, in a situation of this nature it is well to bear in mind the observations of the tailpieces in the decision in *Sachindanand Pandey vs. State of West Bengal* (53) where the learned judge highlighted the necessity to delineate the parameters of public interest litigation. The learned judge noted that today public-spirited litigants rush to courts to file cases in profusion under this attractive name. They must, however, inspire confidence in courts and among the public, and must be above suspicion. Hence, it is imperative to lay down clear guidelines and outline the correct parameters for entertaining such petitions. If courts do not restrict the free flow of such cases in the name of public interest litigations, the traditional litigation along with justice will suffer. It is only when courts are apprised of gross violation of fundamental rights by a group or a class action or when basic human rights are invaded or when there are complaints of such acts as shock the judicial conscience that the courts, especially this court, should leave aside procedural shackles and hear such petitions and extend its jurisdiction under all available provisions for remedying the hardships and miseries of the needy, the underdog and the neglected. The learned judge in the context of that case ended his judgement with a question : 'Is there something more than what meets the eye in this case?' The answer in the instant case is obvious—there is very much more than what meets the eye in the instant case before us. This application must, therefore, fail and is accordingly dismissed."

76. DAMAGES FOR POLICE ATROCITIES

Saheli vs. Commissioner of Police

This is another case of the court awarding compensation for death or bodily injuries caused by the police while exceeding their powers. It may be noted that the court is awarding damages in a writ petition, though normally it is done by a civil court according to the law of torts. Therefore, this case and the preceding ones, form a string of precedents for high courts to follow. The high courts can accept writ petitions under Article 226 and grant compensation and quick relief. A normal suit takes years to complete after hearing witnesses and examining evidence. Then there could be appeals too. A writ petition in an appropriate case would save all these troubles.

Facts: These writ petitions were filed by Saheli, a women's and civil rights organisation, and Women's Resources Centre on behalf of two women

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76. Judges: B.C. Ray and S.R. Pandian.
1989 (Suppl)2 SCR 488; AIR 1990 SC 513.

who have been living in a one-room tenament on a lane in a crowded part of Delhi. They were severely beaten up by the landlords in collusion with the police officers. The nine-year old son of one of the women died in the attack. Their sordid story is narrated in the judgement but it is not necessary to repeat the detail here. The judgement explained the facts to nail responsibility on the policemen.

Ruling: The court held that an action for damages would lie for bodily harm which included assault, false imprisonment, physical injuries and death. The compensation represents a solatium for mental pain, distress, indignity, loss of liberty and death. The court also pointed out that it was well-settled law now that the state was responsible for the tortuous acts of its employees. Therefore, the Delhi Administration was held liable for payment of compensation to the woman whose son was killed in the assault by the station house officer.

The judgement quoted three earlier instances where the state was held liable for the wrongs of its employees. They are: *Joginder Kaur vs. State of Punjab*,1969 ACJ 28, *The State of Rajasthan vs. Vidhyawati*, (1962) Suppl(2) SCR 989 and *People's Union for Democratic Rights vs. Police Commissioner, Delhi.*

The compensation for the death of the boy was put at Rs. 75,000. It was to be paid within a month. The amount could be recovered from the police officers responsible.

77. SCHOOLS FOR PROSTITUTES' CHILDREN

Gaurav Jain vs. Union of India

In this petition, a Supreme Court lawyer sought separate schools for children of prostitutes so that the children could lead a better life.

Facts: The petition pointed out the plight of prostitutes' children who are denied their right to a dignified life guaranteed by Article 21 of the Constitution. He sought separate schools for them and vocational training facilities and hostels. According to the petitioner, if these children are sent to ordinary schools, they would be demoralised. The court issued notices to all state governments apart from the Central Government.

Ruling: The court stated that instead of disposing of the petition with a set of directions, a committee should be constituted to examine the

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77. Judges: R.N. Misra, M.N. Venkatachalia and P.B. Sawant.
1989 (Suppl)2 SCR 173; AIR 1990 SC 292.

material aspects of the problem and submit a report containing recommendations to the court on the basis of which further order could be made and a committee was set up with three advocates and three social workers and the government was asked to deposit Rs. 20,000 towards its expense.

Though the petitioner suggested separate schools, the court was not in favour of it. According to it, segregation of these children by locating separate schools and hostels would not be in the interest of such children. Rejecting this prayer, the court remarked: "It is said that prostitutes do not want to have children, and ordinarily when children are born to them, it is in spite of their desire not to rear children. But once such children are born to them, it is in the interest of such children and of society at large that the children of prostitutes should be segregated from their mothers and be allowed to mingle with others and become part of society. In fact, counsel appearing for several states have stated the same.

"While we do not accept the plea for separate hostels for the children, it is necessary that accommodation in hostels and other reformatory homes should be adequately available to help segregation of these children from their mothers living in prostitute homes as soon as they are identified.

"Litigation has been brought to control prostitution. It has, however, been on the increase and what was once restricted to certain areas has now spread to several localities. The problem has, therefore, become one of serious nature and requires considerable and effective attention."

78. FORCED PROSTITUTION OF CHILDREN

Vishal Jeet vs. Union of India

In this petition, a lawyer moved the court seeking to stop forced prostitution, as well as Devadasi and Jogin traditions, thriving with the connivance of the police.

Facts: As is well known, many young women are being sold in various parts of the country for paltry sums, sometimes even by their poor parents, to the "flesh traders" and brothel keepers. These girls are secluded and tortured mentally and physically until they become slaves of the system from where there is little hope of escape. The petitioner filed

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78. Judges: S.R. Pandian and K.J. Reddy.
AIR 1990 SC 1412; (1990)3 SCC 318.

nine affidavits of girls allegedly living in brothels who want to escape and as many who would not swear on affidavit but have the same sordid story to tell. The petition sought the rescue and rehabilitation of all such girls. Specifically, he sought an inquiry by the CBI into the role of the police and law breakers in the flesh trade to recommend action against them. The petitioner also sought to bring the children of prostitutes and other destitute girls who are potential victims of the flesh trade to protective homes for rehabilitation.

Ruling: The court noted that it was a heart-rending story. Article 23 of the Constitution prohibits trafficking in human beings and forced labour. The Prevention of Immoral Traffic Act has been enacted by Parliament. Article 39 enjoins the state to protect youth against exploitation and against moral and material abandonment. There are several sections in the Indian Penal Code dealing with prostitution. The Juvenile Justice Act is also an important legislation in this respect. In spite of all these provisions, the desired result has not been achieved.

The court said it was not practicable or desirable to order a roving inquiry by the CBI as prayed for. The malignity cannot be eradicated by banishing or punishing the helpless victims, most of whom are unwilling participants who find no way to escape. The law enforcing machinery and the courts should take very severe and speedy action against the culprits like the pimps, brokers and brothel keepers if the malady has to be eradicated. The government should also safeguard the victims' interest and evaluate various measures.

The court issued various directions such as: the state governments should set up advisory committees consisting of government officials and social workers to make suggestions on eradication of child prostitution, the governments must provide adequate rehabilitation homes staffed by qualified persons, and the governments must devise a machinery to ensure proper implementation of the suggestions.

The court expressed its hope and trust that these steps would go a long way to cure the social evils. The petition was disposed of with these directions.

79. ENFORCING PROHIBITION POLICY

B. Krishna Bhat vs. Union of India

Though the Constitution enjoins the government to bring about prohibition of alcohol consumption, the trend was in the opposite direction with the progress of time. Many state governments are under the influence of liquor barons. This petition by a public-spirited person asked the court to stop the governments from encouraging the consumption of intoxicating drinks.

This petition is noteworthy for the reason that it is an example of how one set of judges might take one view on a particular issue and another set of judges might take a liberal view. The petition of Krishna Bhat was dismissed in 1990 observing that the provision for a writ petition "is not the nest for all the bees in the bonnet of 'public spirited persons'." It was dismissed without even issuing notice to the government. But just two years later another bench issued notice to the central and state governments on exactly the same issue on a writ petition by former Union Minister Prof. Sher Singh. This is an encouraging factor, as public-spirited persons need not lose their spirit because of one dismissal. Judges change, times change, and one could always expect a better response from the same court when the same issue is revived.

Facts: Apart from complaining that the governments were not enforcing the prohibition policy, the petitioner specifically attacked the constitutional validity of the Karnataka Excise Act and Rules. He said that instead of enforcing prohibition, the state was encouraging consumption of liquor. So he asked the court to direct the governments to impose prohibition throughout the country and to impose restrictions on manufacture, sale and consumption of intoxicating drinks.

Ruling: The court said it was unable to entertain the writ petition. Article 47 of the Constitution enjoining prohibition is in the chapter on Directive Principles of State Policy which are not enforceable by a court. They are only guiding principles in the governance of the country, but do not confer any right on any citizen, unlike the fundamental rights. Whether a law should be made embodying the directive principles depends on the legislative will determining the choice of priorities in a matter of policy. Article 32 (writ petiton) is not a machinery through which policy preferences or priorities are determined and the Supreme Court is not a forum

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79. Judges: Sabyasachi Mukharji and M.M. Dutt.
(1990)3 SCC 65.

where the conflicting claims of priorities should be debated. The court did not find any direct or casual violation of any fundamental rights of which the petitioner could legitimately claim enforcement.

But in *Prof. Sher Singh vs. Union of India*, another bench of the court issued notice to the central and state governments with a long order at the preliminary stage itself. Excerpts from the order:

The petitioners' grievance is that the Union and state governments are not making sincere endeavour to introduce or enforce prohibition of consumption of alcoholic liquors and have thus failed to implement the directive principles enshrined in Article 47 of the Constitution. Though the Planning Commission had made tangible suggestions in this regard as early as 1956 and the Union Government also drew up a ten point programme for the implementation of Article 47 as early as 1976, all the states (except one) have bid goodbye to the policy of prohibition. Prohibition has even been scrapped by some of the states in which it was in force earlier. The states on an untenable and incorrect plea, that prohibition will entail loss to them of the huge excise revenues yielded by the liquor trade, are taking no steps to introduce or enforce prohibition. On the contrary, their policies are such as to encourage largescale production and excessive consumption of liquor. The deleterious and degrading effects of liquor, particularly on the poorer and weaker sections of society, it is submitted, have serious impact on the fundamental right of the citizens of India to lead a life of good health and dignity. The petitioners, who are believers in Gandhian principles, are deeply pained by the present state of affairs in the country in this respect. Relying on several decisions of this court which have given directions to the state for implementation of some of the directive principles of the Constitution and interpreted the scope of the fundamental right guaranteed under Article 21 in a very comprehensive manner, the petitioners seek the directions of this court to the Union and states

(a) to implement forthwith the mandate of Article 47;

(b) to issue guidelines for the implementation of the mandate in Article 47.

"We do not know how far this court will be in a position to direct the state to take immediate steps for the implementation of the various directive principles enunciated in the Constitution. Prima facie, it would seem that the petitioners' endeavour should be to educate and build up public opinion in favour of their cherished goal. When and how a particular

directive principle should be implemented is a matter of government policy to be decided upon from time to time taking various factors, including economic or other constraints, into account. It will also depend upon the intensity of the political will on any particular issue and on an order of priorities to be decided upon by the government. The courts can perhaps play a limited role, may be, by discouraging or striking down legislation or other measures that may go against the grain of Article 47. However, we can express no concluded opinions on these questions at this stage. It is, however, clear that the petition does raise important issues on which the views of the states should be obtained. Certainly, the petition does not deserve to be dismissed *in limine*.

80. HARASSMENT OF SOCIAL WORKERS

Sunil Gupta vs. State of M.P.

When social workers agitate against exploitation of the weaker sections of society, the vested interests in collusion with the police and law-enforcing machinery harass them. This is one such case in which the activists who surrendered for arrest and refused to seek bail were handcuffed while being taken to court and back. Handcuffing in ordinary circumstances is banned. It is meant to be used only when a criminal has a tendency to escape. The court held it was illegal in this case.

Facts: The petitioners were two social workers of Hoshangabad, who were working against the exploitation of the local farmers and tribal people in the district. There was only one school teacher for two villages for a long time. In spite of repeated complaints, the authorities did not take action. So the activists, under the banner of Kisan Adivasi Sangathan, led a large number of women and children and staged a sit-in at the office of the block education officer. Though they were given official assurance that the complaint would be looked into, the real consequence was repeated criminal complaints against three leaders of the Sangathan, including a 65-year-old tribal widow, who had not been paid wages by the lone teacher. They were charged with obstructing public servants in the discharge of their public functions. It was alleged that they were arrested, abused, beaten up and taken to the magistrate after handcuffing them. They were sentenced to jail, but the widow was let off. The two men were not released even after the jail term but were kept inside by filing new

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80. Judges: S.R. Pandian and K.J. Reddy.
(1990)3 SCC 119.

criminal charges. The magistrate, said the Supreme Court, issued repeated orders of bailable warrants "in a very mechanical and casual manner without application of mind." The facts of the case further revealed deliberate harassment of the two activists by the local authorities.

Ruling: There were allegations and counter-allegations in this case, but the court confined itself to the question of handcuffing. The court said that the petitioners were educated persons. They were agitating for a public cause and submitted themselves for arrest. They did not seek bail. There was no tendency to escape. So there was no reason for handcuffing. According to law, even if extreme circumstances necessitate the escorting police to bind the prisoners in fetters, the police should record the reasons to do so in writing and tell the court so that the court can assess them.

As regards the petitioners' claim for compensation, the court said it was open to them to take appropriate action against the officers in accordance with law, either through civil or criminal courts.

81. PRIVATE INTEREST LITIGATION

Chhatriya Pardushan Mukti Sangarsh Samiti vs. State of U.P.

This is another case of misuse of public interest litigation, which the Supreme Court condemned.

Facts: The petition, in the form of a letter, alleged that an oil mill was polluting the environment in Sarnath, the historic temple town. The petition further stated that people were finding it difficult to eat and sleep due to the smoke and foul smell and the highly polluted water. The whole area was being laid waste due to pollution and health of the people was in danger. In view of the serious nature of the allegations, the court issued notice to the refinery owners. They replied that there was long rivalry between the petitioners and the respondents. The petitioner was an anti-social element and his only aim was to extract money from well-to-do people. Evidence was produced to show instances of blackmail. It was also pointed out that in the 1984 judgement in Bandhua Mukti Morcha case, the Supreme Court had underlined the importance of satisfactory verification of allegations. Further, it was argued that there was a law controlling pollution and therefore the court must follow the procedures prescribed in that law and should not bypass them in a public interest litigation.

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81. Judges: Sabyasachi Mukherji and K.N. Saikia.
AIR 1990 SC 2060; (1990)4 SCC 449.

Lastly, the company said that it had complied with all anti-pollution laws and there was no complaint against it from any quarters.

Ruling: Considering the circumstances, the court held that there was no default on the part of the company. Writ provision under Article 32 of the Constitution is a great and salutary safeguard for preservation of fundamental rights of the citizens. But these rights can be claimed only by a person genuinely interested in the protection of society on behalf of the society or community. This weapon as a safeguard must be utilised and invoked by the court with great deal of caution. Where it appears that this is only a cloak to feed ancient grudge, this should not only be refused but strongly discouraged. While it is the duty of the Supreme Court to enforce the rights, it is also its duty to ensure that this weapon should not be misused or permitted to be misused creating a bottleneck in the superior court preventing other genuine violation of the rights.

"We must protect society from the so-called protectors. This application is legally devoid of any merit or principles of public interest and public protection. This application certainly creates bottlenecks in court, which is an abuse of process of this court," the Supreme Court remarked while dismissing the petition.

82. PUNISHMENT FOR MISUSE OF PIL

Subhash Kumar vs. State of Bihar

This is yet another instance of misuse of public interest litigation to settle scores with an enemy. When the public interest litigation movement was in full swing, some persons exploited it for private ends. We have seen three such cases before. When the court exposed such cases and deprecated them through the judgements, this temporary spurt in the misuse also faded away. The court is now careful at the admission stage itself to examine the motive of the petitioners in the light of these judgements. In this case, the court asked the petitioner to pay costs for the abuse of process.

Facts: This so-called public interest case was filed by the petitioner seeking a direction to the Director of Collieries in Hazaribagh and the Tata Iron and Steel Co. Ltd. to stop immediately the discharge of slurry from its washeries into the Bokaro river. The effluents get settled on agricul-

82. Judges: K.N. Singh and N.D. Ojha.
AIR 1991 SC 420; (1991)1 SCC 598.

tural land, including that of the petitioner's, and reduces the fertility of the soil. The river water was rendered unfit for drinking or agriculture and was a health hazard. Despite complaints to the State Pollution Control Board and the various provisions of law, the company was not restrained from polluting the waters; instead it was given fresh licences.

In reply, the State Pollution Control Board narrated the various steps taken by it to prevent pollution of the river and its various directions to the Tata company. The company was complying with them, and there was no discharge of effluents into the river. The company also gave detailed denial of the charges.

Ruling: The court accepted the replies of the board and the company. The petitioner has no public interest but was fighting in his own interest. He was buying slurry from the company for several years. With the passage of time, he wanted more and more slurry which the company refused. The petitioner, an influential businessman, first tried to put pressure on the company; then he began harassing it. He even removed the slurry in an unauthorised manner for which criminal cases were filed against him and his brother. He filed writ petitions in the high court to get slurry but they were dismissed. Thus he entertained personal grudge against the company. The present petition was one way to vent his anger.

In fact, the prayer in the petition exposed the nature of the litigation. He wanted permission to collect slurry without the authorities' interference. This prayer clearly indicated that he was interested in collecting the slurry for his business.

"Article 32 is designed for the enforcement of fundamental rights of a citizen by the apex court. It provides for an extraordinary procedure to safeguard the fundamental rights of a citizen. Right to live is a fundamental right under Article 21 and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. . . . A petition under Article 32 is maintainable at the instance of affected persons or even by a group of social workers or journalists. But recourse to proceeding under Article 32 should be taken by a person genuinely interested in the protection of society on behalf of the community. Public interest litigation cannot be invoked by a person or body of persons to satisfy his or its personal grudge or enmity. If such petitions under Article 32 are entertained, it would amount to abuse of process of the court, preventing speedy remedy to other genuine petitioners of this court. Public interest litigation contemplates legal proceeding for vindication or enforcement of funda-

mental rights of a group of persons or community which are not able to enforce their fundamental rights on account of their incapacity, poverty or ignorance of law."

It is the duty of the court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants by invoking the extraordinary jurisdiction of the Supreme Court for personal matters under the garb of public interest litigation. With these remarks, the court dismissed the petition with costs payable to the company.

Yet another case dealing with misuse of public interest litigation is *T.N. Rugmani vs. C. Achutha Menon* (1991) Suppl(1) SCC 520. It was actually a case of property and the sanction of the authorities to construct a building. But it changed complexion with the appearance of an ex-chief minister of Kerala and the editor of a local newspaper. The Supreme Court stated that the writ jurisdiction of the Kerala High Court under Article 226 of the Constitution could not be invoked merely because the statutory authorities failed to get an interim order in favour of the landowner vacated. The judgement recalled the observations of the Supreme Court in earlier cases of misuse of public interest litigation.

In *Kameshwar Prasad Sharma vs. State of Bihar*, decided in March 1993, the Supreme Court found that the funds received by the petitioner on behalf of bonded labourers for their resettlement were being misappropriated. During the ten years of the litigation, the petitioner was misusing the benefits granted by the court. The court, therefore, directed the registry not to entertain any further applications in that case.

83. CHILDREN EMPLOYED IN MATCH FACTORIES

M.C. Mehta vs. State of Tamil Nadu

This case is about child labour in the match factories of Sivakasi town in Tamil Nadu, which supplies matches and fireworks to the whole country and exports them too.

Facts: Children of tender age are collected in trucks before dawn and they are made to work for long hours in dangerous conditions. Children are denied education and even their childhood. This was violation of their constitutional rights as well as labour laws, it was alleged in the petition filed by M.C. Mehta, a Delhi lawyer.

83. Judges: R.N. Misra and M.H. Kania.
AIR 1991 SC 417; (1991)1 SCC 283.

Ruling: The manufacturing process of matches and fireworks is hazardous and almost every year fatal accidents occur. Apart from the normal risk of accidents, effect of working in such factories is also a serious problem. The situation remained as it was for half a century without any public attention. So the court thanked the petitioner for bringing the matter before the court.

The judges stated that employment of children in such dangerous work should not be permitted. Article 39(f) and Article 45 of the Constitution mandate that children should be protected from exploitation and they should be given free and compulsory education till 14 years. Despite these directive principles of state policy (not enforceable in a court, but only lay guidelines to the state), children are forced to work due to poverty.

In view of this, the court stated that children should be employed only in the process of packing, away from the place of production, to avoid exposure to accident; also, the minimum wage for children should be fixed. The court suggested 60 per cent of the adult wage as reasonable, though the state government was allowed to fix a higher rate if it was viable.

Special facilities for improving the quality of life of the children should be provided, like education, recreation and socialisation. School time should be so adjusted that employment was not affected. Also there should be provision for job-oriented education.

The state government proposed the creation of a welfare fund to which the factories and the government would contribute. The government was directed to create the fund from 1990-91.

The government was also directed to provide recreation and medical facilities to the children. The question of basic diet should also be considered.

The court directed the government to insure each worker for Rs.50,000. The premium for the group insurance should be the liability of the employer as a condition of service.

While disposing of the petition, the court observed that all problems have not been covered by the judgement and if any new issue arises, it was open for the petitioner or some other agency to move the court for further orders. The court also set up a committee consisting of the district judge, the district magistrate and a public activist in that area to oversee the implementation of the court orders.

84. POLLUTION FROM VEHICLES IN DELHI

M.C. Mehta vs. Union of India

Delhi air is one of the highest polluted in the world. About one lakh new motor vehicles enter the already overcrowded roads every year. This petition attempts to stop the hazard through public interest litigation. Since this is a problem of all other cities and towns, this has relevance to all courts.

Facts: Lawyer M.C. Mehta filed the petition in 1985, seeking to control the menace of pollution in Delhi as it affected the fundamental right to life. Pollution caused by industries, power plants and motor vehicles were pointed out.

Ruling: The court called for details of the vehicles, petrol-driven and diesel-powered, the number of prosecutions under the pollution control laws, and asked the authorities to bring forward techniques of reducing air pollution from vehicles. It also called for the break-up of vehicles owned by public sector and private. The petitioner had mentioned a device evolved by the National Environment Engineering Research Institute, Nagpur, which reduces pollution. The court asked the Environment Ministry to study the effectiveness of the device and make it compulsory to install it in new vehicles at the production stage.

Though the authorities produced the figures of action taken under the Motor Vehicles Act, the court said it was not satisfied with the steps taken. It said that the problem could not be tackled through law alone. Proper awareness among the people should be inculcated. Various parties were before the court, including the Association of Indian Automobile Manufacturers. During the discussion, several points raised were technical in nature. Therefore, the court thought of setting up a committee to look into the problem of vehicular pollution in Delhi. It would be headed by a retired Supreme Court judge. The petitioner, the chairman of the Central Pollution Control Board, a representative of the automobile manufacturers and an official from the Environment Ministry were named members.

The committee's terms of reference were also laid down by the judgement. Among them were:

- to make an assessment of the technologies available for control of vehicular pollution in Delhi,

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84. Judges: R.N. Misra, M.N. Venkatachaliah and A.M. Ahmadi.
AIR 1991 SC 1132; (1991)2 SCC 137,353.

- to look for low cost alternatives, and
- to make specific recommendations for implementing its suggestions.

85. BACKLOG OF CASES IN COURTS

Subhash Sharma vs. Union of India

There is a big backlog of cases in every court, causing delays, expenses and distress to lakhs of litigants throughout the country. The Supreme Court is also burdened with arrears. At one time, there were only half the sanctioned number of judges. Appointments of judges are often caught in politics as the appointing authorities—the executive, the Chief Justices of the high courts and the Supreme Court—pull in different directions. These three petitions sought a remedy for this problem.

Facts: The petitions were filed by lawyer Subhash Sharma, the Supreme Court Advocates-on-Record Association and the honorary secretary of the Bombay Bar Association. They asked the court to direct the Union Government to fill up the vacancies in the Supreme Court and the high courts.

Ruling: The Union Government challenged the maintainability of the petition arguing that this was not a matter in which the court can pass orders. But the court overruled it and stated that once the sanctioned strength was determined, it was the obligation of the Central Government to maintain the sanctioned strength.

The petitions were filed in 1985 and the court adjourned the hearings from time to time with interim directions calling upon the Union Government to fill up the vacancies within specified dates. As a result of this monitoring by interim directions, the position eased somewhat by 1991. But with retirements and other related developments, the number of vacancies kept increasing. This should be remedied.

The judgement goes into the detailed aspects of judges' appointments. It was not satisfied with its 1981 ruling on the position of the Chief Justice of India in the consultation process and fixation of judges' strength. Therefore, it referred those two questions to a bench of nine Supreme Court judges for reconsideration.

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85. Judges: R.N. Misra, M.N. Venkatachaliah and M.M. Punchhi.
AIR 1991 SC 631; 1991 (Suppl)1 SCC 574.

86. DAMS AFFECTING ECOLOGY

Tehri Bandh Virodhi Sangarsh Samiti vs. State of U.P.

There have been protest movements against construction of dams and hydel projects as they cause ecological damages and displace population. This case refers to one such.

Facts: The petitioners asked that the Union Government, the U.P. Government and the Tehri Hydro Development Corporation be restrained from constructing the dam and the hydel project. They alleged threat to life and environment of the entire area as the site of the dam was prone to earthquake. The government countered the allegation saying that its various departments had considered all aspects of the projects and considered them safe. It brought evidence to support its stand.

Ruling: The court stated that the affidavits showed that the government considered the safety of the projects in detail. The court also considered the explanations of the petitioners. But then it said that the questions raised were highly intricate and related to science and engineering. The court did not possess the requisite expertise to render any final opinion on the rival contentions of the experts. It can only investigate and adjudicate the question whether the government was conscious of the dangers pointed out by the petitioners and applied its mind to the safety of the dam. In this case, the government has fully considered every aspect of the project including its safety.

"We appreciate the petitioners' concern for the safety of the project which is of prime importance to the general public. However, in view of the material on record we do not find any good reason to issue a direction restraining the governments from proceeding ahead with the project," the court said.

87. RESETTLEMENT OF TRIBALS

Banwasi Sewa Ashram vs. N.T.P.C.

This order could be a precedent for other dam and thermal projects, both private and government-sponsored, in backward areas from where tribals and others are ousted. The case was filed in public interest in 1982,

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86. Judges: K.N. Singh and Kuldip Singh.
1992 (Suppl)1 SCC 44.

87. Judges: Kuldip Singh, P.B. Sawant and N.M. Kasliwal.
AIR 1992 SC 920; (1992)2 SCC 202 See also (1992)1 SCC 117.

and the court disposed it off in 1992 with more than 13 specific directions in the interest of the evictees.

Facts: Banwasi Sewa Ashram had alleged that the tribals living at the project site in Mirzapur district of U.P. were being mercilessly ousted to make way for the project. This was against their fundamental right to live and therefore they should be given alternative sites. The NTPC, during the years of litigation, had submitted that it had already taken up rehabilitation of the tribals. While it maintained that 678 families would be affected by the project, Banwasi Sewa Ashram contended that more than 1,500 families would be affected.

Ruling: In view of the disputed numbers, the Supreme Court directed the corporation to submit a list of the evictees to the Sonebhadra district judge. The Ashram leader, Prem Singh, will also submit his list. The district judge will finalise the list.

The Supreme Court clamped stringent conditions on the National Thermal Power Corporation for ousting tribals for setting up its super-thermal plant. According to the order, they should be given housing plots measuring 60 ft by 40 ft, shifting allowance of Rs 1,500 and free transport, Rs 3,000 as lumpsum rent, monthly subsistence allowance, jobs through contractors of NTPC, civic facilities for the rehabilitation township including hospitals, schools and sports centres.

The court asked the corporation to give preference in jobs to the oustees in Class III and IV posts subject to their suitability and eligibility. Shops and other business premises within the NTPC campus must be offered to the evictees. It shall also operate for the benefit of the evictees' self-generating employment schemes such as carpentry training, carpet weaving training, and sericulture.

The court further directed that the deputy commissioner of Sonebhadra shall supervise and ensure that the rehabilitation measures are fully complied with by the NTPC.

The district judge of Sonebhadra will be the authority to determine the compensation in respect of land, crop, house and any other legitimate claim based on the existing rights of the oustees. Mr Prem Singh along with a project officer of the NTPC and sarpanch of the area shall verify the extent of the property of the oustees who are likely to be evicted. The district judge of Sonebhadra shall finally decide all the compensation claims before March 31, 1993 according to the Supreme Court judgement.

88. LITIGATION: FOR WHOSE BENEFIT?

Krishna Swami vs. Union of India
Raj Kanwar vs. Union of India

The course of public interest litigation occasionally became contorted with passage of time. What started as a social action movement for the needy and helpless slowly became a tool in the hands of politicians, business rivals and interlopers. The days of PILs in favour of the undertrial prisoners, children in jails, women and the insane in illegal custody seemed distant. Here is a petition filed by two persons who challenged the impeachment procedures set in motion by Parliament against a Supreme Court judge. The interesting point is that the judge did not come forward to seek the remedy. This raises a specific problem: if the beneficiary is silent or does not want to get involved, can others move petitions on his or her behalf? Though the question was academically dealt with in S.P. Gupta case (1982), it arose in concrete form in this case.

Facts: Following allegations of financial irregularities by Justice V. Ramaswami while he was the Chief Justice of the Punjab and Haryana High Court, 108 MPs initiated a notice of motion for his impeachment in 1991. The Speaker set up an inquiry committee to go into the charges, as prescribed under the impeachment procedures. Two PILs were filed against this. The first one was by Mr. Krishna Swami, who claimed sufficient interest to file the writ petition as a member of the Tenth Lok Sabha and as an advocate of Madras known to Justice Ramaswami for long. The other petition was filed by Mr. Raj Kanwar, an advocate of Karnal district in Haryana. Both of them challenged, through PIL, the notice of motion admitted by the Speaker of the Ninth Lok Sabha for the impeachment of Justice Ramaswami. They also asked the court to quash the corruption charges framed by the inquiry committee set up by the Lok Sabha Speaker. A constitution bench, after several days of hearing, dismissed both petitions as they were not maintainable.

Ruling: The judgement stated that in spite of ample opportunity given by the court to the petitioners to implead the judge as a party, they did not choose to do so. The decision of the court would have definitely affected the judge's interests. When the judge himself has not chosen to raise the legal issues affecting him, there was no reason to examine them. Therefore, the petitions have to be dismissed as not maintainable.

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88. Judges: J.S. Verma, N.M. Kasliwal, K. Ramaswamy (dissenting), K.J. Reddy and S.C. Aggarwal.
(1992)2 SCC 341.

Ordinarily, it is the person aggrieved and directly affected who must seek the relief himself unless disabled from doing so for a good reason which permits someone else to seek the relief on his behalf. In that situation also, the claim is made in substance by the person affected even though the form may be different and it is so stated expressly.

The judgement then quoted the S.P. Gupta judgement (14) in which this aspect was dealt with. In that case, some lawyers were fighting the case of a few high court judges who were transferred or not confirmed in their appointments. The passages are quoted below:

"But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique consideration. The court must not allow its process to be abused by politicians and others. . . .

"Before we part with this general discussion in regard to *locus standi*, there is one point we would like to emphasise and it is, that cases may arise where there is undoubtedly public injury by the act or omission of the state or a public authority but such act or omission also causes a specific legal injury to an individual or to a specific class or group of individuals. In such cases, a member of the public having sufficient interest can certainly maintain an action challenging the legality of such act or omission, *but if the person or specific class or group of persons who are primarily injured as a result of such act or omission, do not wish to claim any relief* and accept such act or omission willingly and without protest, *the member of the public who complains of a secondary public injury cannot maintain the action*, for the effect of entertaining the action at the instance of such member of the public would be to foist a relief on the person or specific class or group of persons primarily injured, which they do not want.

"We have taken a broad and liberal view in regard to *locus standi* and held that any public-spirited advocate acting bona fide and not for private gain or personal profit or political motivation or any other oblique consideration, may file a writ petition in the high court challenging an unconstitutional or illegal action of the government or any other constitutional authority prejudicially affecting the administration of justice and in such writ petition he may claim relief not for himself personally but for those who are the direct victims of such unconstitutional or illegal action, because granting such relief to them would repair the injury caused to administration of justice. *But the persons for whom the relief is sought*

must be ready to accept it; they must appear and make it known that they are claiming such relief; it cannot be thrust upon them unless they wish it.

"The court does not decide issues in the abstract. It undertakes determination of a controversy provided it is necessary in order to give relief to a party and if no relief can be given because none is sought, the court cannot take upon itself a theoretical exercise merely for the purpose of deciding academic issues, howsoever important they may be. The court cannot embark upon an inquiry whether there was any misuse or abuse of power in a particular case, unless relief is sought by the person who is said to have been wronged by such misuse or abuse of power. The court cannot take upon itself the role of a commission of inquiry—a knight errant roaming at will with a view to destroying evil wherever it is found."

89. POLITICAL BATTLE THROUGH PIL

Janata Dal vs. H.S. Chowdhary

We have seen in some previous intances, how the PIL movement had been hijacked by private interests. This is one such glaring instance, related to the Bofors issue which contributed to the downfall of the Rajiv Gandhi Government in 1989. A mere reading of the list of parties before the court would indicate that this was no genuine PIL, but an exercise in settling political scores. The parties were: Janata Dal, CPM, Indian Congress (Socialist), Mr. H.S. Chowdhary who is a lawyer of Delhi, and Dr. P. Nalla Thampy Thera, a doctor from Kerala who occasionally files PILs in the Supreme Court. The court denied standing (*locus standi*) to all of them and used the occasion to chastise those who misuse PIL, under a heading "Vexations and frivolous litigations." It traced the growth of PIL through several Supreme Court judgements and then narrated its misuse in the latter days. Since it is very informative, the discussion is given at length below.

Facts The Bofors issue rocked Indian politics for several years since 1987 when a Swedish broadcast alleged that bribes had been paid to senior Indian politicians and key defence figures to win the contract awarded by the government to Bofors gun manufacturers of Sweden. The Rajiv Government which was in power at that time fell at the next general election. The V.P. Singh Government which succeeded filed an FIR in the case in 1990. A Delhi court sent a "letter rogatory" to the Geneva court seeking

89. Judges: S.R. Pandian and K.J. Reddy.
(1992)4 SCC 305.

its cooperation for details of secret accounts in the Swiss banks to which the bribes were believed to have been credited. It was at this time, Mr. Chowdhary, an advocate claiming to be the general secretary of "Rashtriya Jan Parishad" devoted "to uphold the rule of law, fight against injustice in any field and abide by the Constitution" moved a PIL before the special court in Delhi. Invoking the fundamental duties of the citizens under Article 51(A) of the Constitution, he sought the quashing of the FIR and the letter rogatory. It was dismissed as he had no direct interest in the investigation nor suffered any special loss. He appealed to the Delhi High Court, which also denied standing to him. Several political parties also joined him but the high court denied *locus standi* to all of them. So all of them appealed to the Supreme Court, again with the same result. The Supreme Court ruled that courts normally should not interfere with investigation. It also dealt with several issues in criminal law, but the discussion on the misuse of PIL is relevant for our purpose and therefore it is reproduced in detail here.

Ruling "It is clear that only a person acting bona fide and having sufficient interest in the proceeding of PIL will have *locus standi* and can approach the court to wipe out the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit or political motive or any oblique consideration. Similarly, a vexatious petition under the colour of PIL brought before the court for vindicating any personal grievance, deserves rejection at the threshold.

"It is depressing to note that on account of such trumpery proceedings initiated before the courts, innumerable days are wasted which time otherwise could have been spent for the disposal of cases of the genuine litigants. Though we are second to none in fostering and developing the newly invented concept of PIL and extending our long arm of sympathy to the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated and whose grievances go unnoticed, unrepresented and unheard; yet we cannot avoid but express our opinion that while genuine litigants with legitimate grievances relating to civil matters involving properties worth hundreds of millions of rupees and criminal cases in which persons sentenced to death facing gallows under untold agony and persons sentenced to life imprisonment and kept in incarceration for long years, persons suffering from the undue delay in service matters, government or private persons awaiting the disposal of tax cases wherein huge amounts of public revenue or unauthorised collection

of tax amounts are locked up, detenus expecting their release from the detention orders etc.etc. are all standing in a long serpentine queue for years with the fond hope of getting into the courts and having their grievances redressed, the busybodies, meddlesome interlopers, wayfarers or officious interveners having absolutely no public interest except for personal gain or private profit either for themselves or as proxy of others or for any other extraneous motivation or for glare of publicity break the queue muffling their faces by wearing the mask of public interest litigation, and get into the courts by filing vexatious and frivolous petitions and thus criminally waste the valuable time of the courts and as a result of which the queue standing outside the doors of the court never moves which piquent situation creates a frustration in the minds of the genuine litigants and resultantly they lose faith in the administration of our judicial system.

"In the words of Justice Bhagwati, 'the courts must be careful in entertaining public interest litigations' or in the words of Justice Sarkaria, 'the applications of the busybodies should be rejected at the threshold itself' and as Justice Krishna Iyer has pointed out, 'the doors of the courts should not be ajar for such vexatious litigants.'

"Further, we would like to make it clear that it should not be misunderstood that by the expression of our above view, there is any question of retreating or recoiling from the earlier views expressed by this court about the philosophy of public interest litigation in many outstanding judgements which we have already referred to; on the other hand, we look back to the vantage point from which we started our journey and proceed on our onward journey in the field of PIL.

"Keeping in mind the recent development of the doctrine of PIL and the judicial exposition of the rule governing *locus standi*, we shall now revert to the facts of the instant case and carefully examine the questions: (1) Whether H.S. Chowdhary has *locus standi* to file this litigation and (2) Whether this litigation will fall within the ambit and scope of PIL seeking declaratory as well as injunctive reliefs. Before the special judge, he filed the petition under Article 51-A of the Constitution proclaiming that he being the general secretary of an organisation, calling itself as Rashtriya Jan Parishad which is devoted to uphold the rule of law and fight against injustice, has got a fundamental duty to inform the court "regarding the activation of the complainant (CBI) in the aforesaid case which has tarnished the image, credibility of the nation and has also lowered the national prestige." According to him, the prosecution has been malevolently

launched with rancour, stimulated by political vendetta after Mr. V.P. Singh became the Prime Minister, who with his colleagues have attributed mendacious charges publicly, that there was payment of kickbacks and receipt of bribe from Bofors.

"In short, he argued that those who were at the helm of affairs in the then government during January 1990, in their attempt to lock horns with those who were in power of the then outgoing government with malafide intention of vindicating their electoral rivalry, have been instrumental in registration of the FIR containing the unveracious and vile charges by using every possible trick and ruse at their command and disposal and making vociferous verbal attack with their lung power to settle their personal scores with their political opponents. The further attack against the author of the FIR and the investigating agency is that the CBI under "pressure of its political masters in conspiracy with them have been giving recklessly the names of various leaders of this country to tarnish their image without any basis"; and the onset of the investigation is biased, unfair and unethical and the procedure adopted is in utter violation of the provisions of the Constitution and the procedural law.

"After deeply and carefully considering the submissions of all the parties, we see much force in the submissions made by the CBI. A reading of the petitions filed by Mr. Chowdhary before the special judge and the high court clearly unfolds that he appears to be very much concerned with the personal and private interest of the accused in the criminal case and there is absolutely no involvement of public interest. Can it be said that this litigation is in the nature of PIL to vindicate and effectuate public interest? The emphatic answer would be "Not even a single ray of the characteristic of public interest litigation is visibly seen."

"Indeed, we are surprised to note that in the petition filed before the high court, Mr. Chowdhary has stated that it is his duty to see that 'individuals' get justice from the Indian courts. From whichever angle we survey and audit the contentions in both the petitions before the courts below and the petition filed before this court, there can be no escape except to come to the conclusion that Mr. Chowdhary has no *locus standi* at all to file these petitions, as found by the courts below.

"In this connection, we would like to add a few words about the dismissal of the applications of the interveners (the political parties). The high court rejected the applications of the interveners as having no right to be impleaded as a consequence of the dismissal of the petition of Mr.

Chowdhary on the ground that he has no *locus standi.* We too, having held that Mr. Chowdhary has no *locus standi* to file the petition, dismissed the applications of the interveners. It is significant to note that the Janata Dal, in its submissions, has stated that it never claimed any *locus* to intervene in the matter; and that in fact its stand was that Mr. Chowdhary had no *locus* to interfere in the investigation and that the Janata Dal intervened in the matter only after the high court began to seriously entertain the petition of Mr. Chowdhary without even deciding the question of his *locus* and that the Janata Dal's intervention was only to prevent sabotage of the investigation."

90. POLITICIANS' ACCESS TO COURTS

Simaranjit Singh Mann vs. Union of India

When the Supreme Court widened the 'standing' of petitioners in the S.P. Gupta case (14), it warned the courts that those who moved them for political motivation should not be allowed access. Ten years after this pronouncement, the Supreme Court had to deal with several 'political' cases, like the Bofors (89) and the impeachment move against a judge of the apex court (88). This case belongs to that category. A political leader sought relief on behalf of two convicts who themselves had exhausted all legal remedies. The question was whether a total stranger to the prosecution can challenge the conviction through a public interest writ petition in the Supreme Court.

Facts: 'Sukha' and 'Jinda' were convicted for murder of Gen. Vaidya in Pune and sentenced to death. They did not appeal against the death penalty and the sentence was confirmed by the Supreme Court. Then the petitioner, president of the Akali Dal (Mann), moved a PIL in the Supreme Court claiming that he was "vitally interested in upholding the rule of law and ensuring that the same was applied equally with fairness, equity and good consciousness to all."

Ruling: The Supreme Court denied standing to the Akali Dal leader, following the decisions in S.P. Gupta (14), Krishna Swami (88) and Janta Dal (89) judgements. The petition was summarily rejected. The judgement said:

"The petitioner does not seek to enforce any of his fundamental rights nor does he complain that any of his fundamental right is violated.

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90. Judges: A.M. Ahmadi and K. Ramaswamy.
(1992)4 SCC 653.

He seeks to enforce the fundamental rights of others, namely, the two condemned convicts who themselves do not complain of their violation.

"Ordinarily, the aggrieved party which is affected by any order has the right to seek redress by questioning the legality, validity or correctness of the order, unless such party is a minor, an insane person or is suffering from any other disability which the law recognises as sufficient to permit another person, e.g. next friend, to move the court on his behalf. If a guardian or a next friend initiates proceedings on behalf of such a disabled aggrieved party, it is in effect proceedings initiated by the party aggrieved and not by a total stranger who has no direct personal stake in the outcome thereof.

"In the present case no fundamental right of the petitioner before us is violated; if at all, the case sought to be made out is that the fundamental rights of the two convicts have been violated. The two convicts could, if so minded, have raised the contention in the earlier proceedings but a third party, a total stranger to the trial commenced against the two convicts, cannot be permitted to question the correctness of the conviction recorded against them. If that were permitted any and every person could challenge convictions recorded day in and day out by courts even if the persons convicted do not desire to do so and are inclined to acquiesce in the decision. If the aggrieved party invokes the jurisdiction of this court under Article 32 of the Constitution, that may stand on a different footing as in the case of *A.R. Antulay vs. R.S. Nayak & Anr.* (1988)2 SCC 602.

"However, we should not be understood to say that in all such cases the aggrieved party has a remedy under Article 32 of the Constitution. Unless an aggrieved party is under some disability recognised by law, it would be unsafe and hazardous to allow any third party to question the decision against him.

"We are satisfied that neither under the provisions of the Cr.P.C. nor under any other statute is a third party stranger permitted to question the correctness of the conviction and sentence imposed by the court after a regular trial. On first principles we find it difficult to accept the contention that such a public interest litigation commenced by a leader of a recognised political party who has a genuine interest in the future of the convicts should be entertained. In S.P. Gupta (14) Justice Bhagwati observed: 'But we must be careful to see that the member of the public, who approaches the court in cases of this kind, is acting bona fide and not for personal gain or private profit or political motivation or other oblique

consideration. The court must not allow its process to be abused by politicians and others. . . .'

"These observations were made while discussing the question of *locus standi* in public interest litigation. These words of caution were uttered while expanding the scope of the *locus standi* rule. These words should deter us from entertaining this petition. This accords with the view expressed by this court in *M. Krishna Swami vs. . Union of India & Ors* and in *Janata Dal vs. H.S. Chowdhary.*"

91. JOB QUOTAS FOR BACKWARD CLASSES UPHELD

Indra Sawhney vs. Union of India

This is an example of PIL diffusing a political situation which could have riven the nation along the lines of caste and class. While 1992 saw several PILs in the Supreme Court where political parties fought by proxy in the name of public interest, this PIL referring to the Mandal issue is one which gave a healing touch to the nation's psyche. It is beyond the scope of this work to go into the details of this one-thousand page judgement; it is cited here only to record one of the glorious moments of the PIL movement.

Facts: When the V.P. Singh Government issued a notification implementing the Mandal Commission recommendations on job reservation for backward classes, there were instant protests and rioting in many parts of the country. The situation was saved when the issue was taken to the Supreme Court through PIL and the government notification was stayed. More than 80 writ petitions were filed by individuals, organisations and political parties. The nine-judge bench heard the case for nearly one year and delivered six separate judgements.

Ruling: While upholding reservation of jobs in the government and public sector undertakings, the majority judgement upheld a ceiling of 50 per cent on job quotas. It directed the governments to "siphon off the creamy layer" from the backward classes. The governments were asked to set up commissions to identify the classes eligible for the benefit. The court further underlined that there should be no reservation in promotions.

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91. Judges: M.H. Kania, M.N. Venkatachaliah, A.M. Ahmadi, T.K. Thommen, P.B. Sawant, Kuldip Singh, B.P.J. Reddy and R.M. Sahai.
(1992) Suppl(3) SCC 217.

92. WAGES FOR PRISONERS' WORK

Poola Bhaskara Vijayakumar vs. Andhra Pradesh

The question was whether the prisoners were entitled to wages for the work they are compelled to do in the jails. The judgement discusses the rights of the prisoners and concluded that they would be entitled to be paid for their labour.

Facts: A student of criminology, while visiting the central jail at Visakhapatnam, noticed that those undergoing rigorous imprisonment were forced to work without wages. He thought it was extortion and forced labour. So he moved the writ petition asking the high court to compel the authorities to pay prisoners for their work. The fundamental right of the prisoners to get wages (Article 23 of the Constitution banning forced labour) was violated, it was argued. The authorities argued that the petitioner was not a "person aggrieved."

Ruling: The court praised the public spirit of the student "who has not yet ceased to weep over others' sorrows and sufferings." It overruled the "traditional objection" raised by the government that the petitioner was not an aggrieved person. "In public law, unlike in private law, many more are welcomed and accepted as aggrieved persons," the judgement underlined.

The court held that a person undergoing the sentence of life imprisonment with hard labour cannot claim a right to be paid wages. Article 23 deals with extraction of forced labour from persons who are free to reject the work. But the prisoners are not free to reject the labour, which is part of their sentence. They have to do the work, wages or no wages.

Moreover, Article 23 is not intended to be a right available against the state. It is a prohibition against the social practice of one member of society acting against another member's rights.

However, payment of wages to convicts is not forbidden by law. Moreover, Article 21 guarantees to all persons life and personal liberty. A prisoner does not lose all his rights by reason of his imprisonment. Several of his civil rights are still retained by him, like his right to livelihood and to preserve his life. Taking a liberal view of the matter, the court stated that the prisoners would be entitled under Article 21 to be paid for their labour and the state would be violating their right by extracting

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92. Judge: P.A. Choudhary.
AIR 1988 A.P. 295.

labour from them without payment. "The present payments being made by the state are awfully inadequate. In them there is neither consideration for their work, nor compassion for their fate," the judgement said and directed the state to pay the prisoners "adequately."

How much is adequate? This cannot be judged straightaway, said the court. The issue should be studied by a group of competent penologists, sociologists and economists. Therefore, the court directed the state government to set up such a committee to consider the various aspects of the question and fix a scale of wages payable to the prisoners "which would be fair and considerate to them and would not be unfair to the rest of society."

93. PLAY OFFENDING SOCIETY

T. Parameshwaran vs. District Collector

This is a case in which a play offending the Christian community was being staged in Kerala amidst wide protests. The debate is about the limits of freedom of expression and the executive's power to regulate public performances.

Facts: The district collector of Ernakulam in the Kerala State prohibited the staying of a play about Christ as he feared violent protests against it. A society formed to protect freedom of expression challenged this order. The high court set up a panel of experts to report to it on the "need, desirability and justification" for imposing the ban on the play. The panel was evenly divided on the issue, though none of them found any literary or artistic merit in the play.

Ruling: The judges unanimously held that the play was "deliberately intended to outrage the religious feelings of the Christians by insulting or blaspheming Christian religion and Christian beliefs and is therefore an objectionable performance as defined in the Kerala Dramatic Performances Act."

The playright went up on appeal to the Supreme Court. It referred the matter back to the collector for a review of his decision without being influenced by the high court judgement. The Supreme Court observed that as the matter "perhaps may involve a problem of law and order, it would not be proper for this court to interfere with the (collector's) order." 1986(2) Scale 1254.

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93. Judges: John Mathew and Balakrishnan.
AIR 1988 Kerala 176.

94. HOUSES FOR THE JUDGES

Chengappa vs. State of Karnataka

This is a petition seeking proper housing for the Karnataka High Court judges in Bangalore. This kind of petition is not normally what one would expect from PIL, as it is not on behalf of the underprivileged and the oppressed. But this case at least serves to show how PIL has diversified in a decade.

Facts: The petitioner was a high court advocate. He argued in the petition that he was interested in the independence of the judiciary. Therefore, the judges should not be made to depend upon the executive for the allotment of official residences for the judges, which is part of their conditions of service. Therefore, the government has an obligation to assign certain number of houses to the judges.

Ruling: Making provision for houses involves a number of questions, like their availability, priority requirements, and the like. Even if certain number of houses are kept apart for the judges, there could be other difficulties—like some judges may not avail of the facility and continue to live in their houses, or that of their relatives. It will not be proper to settle all these questions in a writ petition.

Even if houses are not set apart for judges, it would not affect their independence as they are made of 'sterner stuff'. They are capable of functioning with dignity, impartiality and independence even when placed in austere circumstances of a humble house; quality of justice does not depend upon the size of the house. A judge shines most when there is self-denial and abnegation.

In spite of the government's best efforts to provide houses to the judges, if there is delay in allotment, that alone should not sensitise lawyers to move court on behalf of judges. The problem should be tackled by the court administration and the government and not by a writ petition.

95. DEMOLITION OF BOMBAY HUTMENTS

Youth for Unity and Voluntary Action vs. State of Maharashtra

Two issues discussed in this judgement are demolition of hutments

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94. Judge: S. Rajendra Babu.
AIR 1991 Karnataka 5.

95. Judges: C. Mookerjee and S.P. Bharucha.
AIR 1991 Bombay 60.

by civic authorities and the limits to which PIL can be used. Earlier judgements of the Supreme Court on both points are quoted in this verdict.

Facts: The Maharashtra Government issued notice to a hutment dweller in Bombay for demolition of his house. He, therefore, filed a suit in the city civil court against the threatened action and sought an injunction against the authorities. The court dismissed it as it held that it had no jurisdiction to entertain the suit. He moved the Bombay High Court on appeal. The Youth for Unity and Voluntary Action (YUVA) appeared as an intervener. The single judge turned the suit into a PIL and after long proceedings ordered demolition of hutments in several areas in the city. "Since expeditious action is the essence of the matter, authorities concerned are directed to swing into action," Justice Sharad Manohar ordered. Before the appeal against this order and three writ petitions could be filed, some 600 hutments had already been demolished. The division bench presided over by the Chief Justice set aside the single judge's order.

Ruling: The two main issues—the power of the authorities to demolish unauthorised structures and the limits of PIL—are dealt with in detail in the judgement.

The conclusion on the first point is that the state government and the municipal corporation are given powers under law to demolish unauthorised structures. It is for these authorities to decide when and where such powers shall be exercised. To direct the authorities to demolish all hutments within a very short time is to infringe on the sphere of the executive. It is for the executive to decide when to demolish hutments, in what area having regard to the various problems that might arise by having the occupants roaming the streets, problems which the courts would not have the requisite knowledge of nor expertise to resolve. The single judge's orders leave no one in doubt about the general concern he felt for the city having regard to the proliferation of unauthorised colonies. But he should have known his limitation, the division bench said setting aside the order.

On PIL, the judgement said that it has to be started in a writ petition under Article 32 of the Constitution in the Supreme Court or Article 226 in a high court. It is entertained to protect the rights of a person or class of persons who are not in a position to move the court. In this case, it was a suit of an individual and not a writ petition. It could not have been converted into a PIL. By declaring an appeal in the suit of an individual as PIL, it does not become one.

The judges quoted observations in the Supreme Court judgements in Bandhua Mukti Morcha (34), Rural Litigation (39) and Parent of H.P. student (42) to support its view on PIL.

96. NEGLIGENT BANK HAULED UP

B.R. Delavai vs. Indian Overseas Bank

This PIL has nothing to do with the helpless and the downtrodden, but deals with the failure of bank officers causing a loss of nearly Rs. 200 crores to the nation. This case is another example of the variety of subjects which are now being taken up by the high courts, though it may be far from the original purpose of evolving PIL, explained in the S.P. Gupta case. The high court in this case further expands the scope of PIL.

Facts: The petitioner, as head of several social welfare organisations, filed the writ petition seeking an investigation into the overseas operations of the Indian Overseas Bank. Stating that he is a tax payer and a citizen of India he made detailed allegations about the misuse of power by top officers causing a loss of nearly Rs 200 crores to the country. He asked the court to issue corrective guidelines to the nationalised bank to preserve national wealth.

Ruling: The court said that it could not formulate guidelines as it would amount to legislation, which is not the function of the court. Guidelines have already been framed by the Reserve Bank of India.

However, the court held that the tax-payer has 'standing' to maintain the petition. "Being aware of the limitations of legalism, the Supreme Court and the high courts to some extent for the last decade and a half did their best to bring law into the service of the poor and downtrodden under the banner of PIL. The range is wide enough to cover from bonded labour to prison conditions to environmental pollution. It is not confined to enforcement of fundamental rights of an individual or a group of persons, but would take in the rights of the public at large," the judgement said.

The court then quoted the S.P. Gupta, M.C. Mehta and Sheela Barse judgements of the Supreme Court to reject the defence of the bank that the petitioner had no standing and therefore his petition was not maintainable. In the light of the Supreme Court judgements, there was no doubt that the petitioner as a citizen and tax payer has requisite standing to

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96. Judge: Srinivasan.
AIR 1991 Madras 61.

maintain the petition as his complaint was that the officials of the nationalised banks failed to do their duty resulting in huge loss to the nation, the high court said.

97. MAINTAINING TEACHING STANDARDS

Biswajit Sinha vs. Dibrugarh University

The students' union takes up the issue of fall in the standards of the university in this PIL. Again, this is a departure from the traditional goals of PIL, though the high court describes it as one.

Facts: This case is mainly on the qualifications of the teaching staff. While the university rules lay down the minimum qualifications, some candidates with lesser qualifications were recruited. These appointments were challenged by a students' union in a PIL "for upholding the cause of proper teaching." The court quashed the appointments.

Ruling: The judgement deals mainly with the facts of the case, but its assertion of the standing of the students' union is of wider interest. Excerpts: "The norms and standard of imparting technical education to the student in the university involves public interest. It is in the interest of the public the students must get proper teaching by competent teachers. . . Therefore a writ petition by way of PIL, challenging such recruitment, would be maintainable by a students' union."

98. PIL PETITIONER TOLD TO PAY UP

H.K. Chopra vs. P.G.I., Chandigarh

We have seen several cases of PIL for private interest and how the courts saw through the game. The present case is an example of such abuse and the court calls it "vexatious" litigation.

Facts: The petitioner, claiming to be a social worker and journalist, questioned the eligibility of a doctor to hold the post of associate professor at the Post Graduate Institute of Medical Education and Research, Chandigarh. Earlier he had filed a criminal case against the same doctor, but it was dismissed by the magistrate. Then he filed the PIL in the high court.

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97. Judges: S.K. Homchaudhuri and M. Sarma.
AIR 1991 Gauhati 27.

98. Judges: S.S. Sodhi and Amarjeet Chaudhary.
AIR 1992 Punjab & Haryana 30.

Ruling: "Malicious intent is what this petition smacks of," the judgment said in its opening remarks. The court examined the doctor's qualifications and observed that they far exceeded the requirement. The court further stated that the entire exercise of the petitionber was to help the interests of the doctor's rivals for getting the post, by seeking to block his candidature by PIL. "Seen in this light, the present proceedings cannot but be branded vexatious," the court said. It imposed Rs. 5,000 as punitive cost upon the petitioner.

99. CM'S CALL TO SLAP CORRUPT OFFICIALS

Bimal Prasad Das vs. Bijayananda Patnaik

In an emotional moment, the Orissa Chief Minister called upon the people to beat up corrupt officials. This was against the rule of law, said the petitioner. In the end, the politician 'read down' his earlier statement and an ugly situation was averted.

Facts: A public-spirited advocate of the Orissa High Court filed the PIL challenging the call given by the Chief Minister, as published in the daily newspapers of Orissa, to beat up corrupt officials. The public call violated the basic structure of the Constitution and was against the rule of law. He sought an injunction against the Chief Minister to prevent any action pursuant to his call.

The Advocate General opposed the petition, alleging that the petitioner had taken up the cause of the corrupt officials and he was not a "person aggrieved." The petition did not disclose violation of any fundamental right. The officials themselves have not come to the court, therefore a PIL on their behalf should not be heard. The petitioner is a meddlesome interloper or busybody who should not be heard, according to Supreme Court's earlier judgements, it was argued.

Ruling: The high court upheld the standing of the advocate. His approach to the court was "to protect the rule of law and not for aggrandizement of any personal gain." A very pertinent question of great constitutional importance having been raised by the petitioner, his approach to the court could not be scuttled. It was immaterial for this purpose that the affected had not approached the court. The call for beating up corrupt officials was violative of Article 21 of the Constitution (protection of life

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99. Judges: B.L. Hansaria and B.N. Dash.
AIR 1992 Orissa 10.

and liberty). Injury to public interest and rule of law were apparently involved and therefore the court should hear the petition. "Let law and courts not be closed for those who are ignited by real public interest," the judgement said.

The court, however, accepted the statement of the Advocate-General that the Chief Minister's declaration should not be taken literally and the basic idea behind it was to instil a fear psychosis among the corrupt officials that the govenment would not tolerate their behaviour. Where the allegations of corruption are established after investigation, disciplinary steps would be taken. The speech of the Chief Minister made in the legislature, diluting his earlier declaration, was produced in the court. The petitioner was also satisfied with the latter statement. Therefore, the court disposed of the PIL stating that though the petitioner had good reasons to move the court, in view of the Advocate General's stand and the speech in the Assembly, no injunction or direction was necessary.

100. BAR ON FILM AGAINST RESERVATION

P. Jagajeevan Ram vs. Union of India

The late eighties saw a lot of social tension over reservation of government jobs for the backward classes. During this period, a Tamil film was produced in Madras with a message against the reservation policy. Backward class organisations wanted to stop the exhibition of the film. Though they succeeded in the Madras High Court, the Supreme Court allowed its exhibition.

Facts: Some organisations moved a single judge bench of the high court against the exhibition of the film *Ore Oru Gramathile*, but he dismissed their writ petitions. Therefore, they appealed to the division bench of the same high court. The story portrayed a Brahmin woman IAS officer, who had forged a certificate that she belonged to a backward class to get the benefit of reservation in government jobs. The film treated her sympathetically. The petitioners argued that the showing of this would disturb public peace, it was a calculated attempt to denigrate the constitutional provisions on reservation, it advocated commission of offences like forgery and impersonation, it degraded independent India and praised the British rule, it caricatured B.R. Ambedkar and the court scenes were objectionable. The producers of the film denied all these charges and maintained that the purpose of the film was to promote national integrity,

100. Judges: Sathidev and Bellie.
AIR 1989 Madras 149.

it did not advocate untouchability and the film certification board had granted the film Universal exhibition certificate after following the rules and guidelines. The film favoured reservation on the basis of the economic status of the candidate and not on the basis of community. Many of the arguments were about the law and procedures under the Cinematograph Act.

Ruling: The high court held that the PIL petitions were maintainable. Rejecting the argument of the producers that the film had not been exhibited in the theatres, but only been certified, the court held that a citizen can approach it immediately after certification. The court further stated that when a fundamental right of a citizen was violated, he can always file a writ petition. After considering the provisions on film certification, the court held that the film should be judged on its overall impact on society. The certificate was revoked as the court felt that the exhibition of the film would be adverse to public interest.

The matter later went up to the Supreme Court which overruled the high court judgement. The film was released. The Supreme Court observed: "Freedom of expression which is legitimate and constitutionally protected cannot be held to ransom by an intolerant group of people. Fundamental freedom under Article 19(1)(a) can be reasonably restricted only for purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practise tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself."

101. COMPENSATION FOR RIOT VICTIMS

R. Gandhi vs. Union of India

Are victims of communal riots entitled to compensation from the government? This judgement is a step forward in asserting the rights of the victims, though it leaves the assessment of the amount to the executive i.e., the collector and the state government.

Facts: As an aftermath of the assassination of former Prime Minister Indira Gandhi in 1984, a series of violent incidents took place in Coimbatore in which the properties of the Sikh community were destroyed by hooligans. Two lawyers and two law students visited the city soon thereafter

101. Judge: S.A. Kader.
AIR 1989 Madras 205.

for an on-the-spot study. They wrote a report on the basis of which they moved a PIL seeking compensation for the riot victims and their rehabilitation. The fundamental rights of the Sikhs (equality, right to live, right to trade) and their property rights were violated due to the failure of the state to perform its duty. The petition sought the appointment of a panel of commissioners to submit a report for the rehabilitation of the victims.

The collector of Coimbatore had conducted an inquiry into the incidents and a tabular statement was submitted to the Madras High Court. In 32 cases, he had recommended payment of compensation amounting to over Rs 33 lakhs. The state government, however, maintained in the court that it had taken all possible steps to contain the spontaneous reaction by a section of the people. Damage caused to properties were assessed. But the government stated that there was no question of payment of compensation. Under the guidelines laid down by it, ex gratia payments were made from the Chief Minister's Public Relief Fund. Prompt steps were taken for rehabilitation of the affected and therefore a commissioners' panel was not necessary.

Ruling: Referring to earlier PIL judgements by the Supreme Court, the high court stated that its power was not merely to prevent the violation of fundamental rights but also to remedy and provide relief against the breach of those rights. It said that the petition for redressal of public injury suffered by a section of the community, instituted by lawyers and law students, was maintainable as a PIL. The court also held that the victims were entitled to reasonable compensation and directed the state government to pay it strictly as assessed and recommended by the collector.

102. BID TO EXPOSE CORRUPTION

P.N. Dubey vs. Union of India

There are plenty of allegations of corruption against politicians, but can PIL be used to nail them? So far, this has proved to be an almost impossible task. The high courts and the Supreme Court do not record evidence, it is the work of the subordinate courts. Unless the activists move the criminal courts or special judges under anti-corruption laws, the writ courts cannot play any direct role. This case is one such example. It also underlines that allegations of corruption in newspaper reports cannot be treated as evidence in a court of law.

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102. Judges: C.P. Sen and Y.B. Suryavanshi.
AIR 1989 M.P. 225.

Facts: This PIL was moved by a lawyer in Jabalpur, against a collector who later became an MP. It was alleged that he acquired tainted wealth from several financial deals with the protection of the then Chief Minister. When he was about to be exposed in some cases, he was elected to the Rajya Sabha with the help of the Chief Minister. Several newspaper clippings were presented to the court to substantiate the charges. Therefore, he asked the high court to challan the man under the Prevention of Corruption Act, quash his resignation from the IAS as well as his election to the House.

The Madhya Pradesh Government replied that he was a mere busybody and interloper, acting for personal gain or revenge. It was further stated that newspaper reports cannot be the basis of the case in the absence of cogent evidence. The high court cannot act as an investigating agency, abandoning its judicial role. Disqualification of an MP is within the power of the Chairman of the Rajya Sabha, and the court cannot issue an order to him under the Constitution. Moreover, there are several authorities which deal with allegations made in the petition and the high court was not the forum for pursuing them, it was argued. The MP also argued on the same line.

Ruling: The high court dismissed the petition, but made several significant observations. Firstly, it held that the petition was maintainable as a PIL and the petitioner had *locus standi* according to several Supreme Court rulings since the S.P. Gupta judgement (14). The high court also noted the Supreme Court's observations that those professing to be public-spirited citizens could not be encouraged to indulge in wild and reckless allegations besmirching the character of others.

Secondly, it stated that a news item could be taken only as a hearsay evidence in a court of law. It is not admissible as evidence unless the maker of the statement appeared in the court and deposed that he knew the facts. (This means that the affidavit of the newspaper reporter would be admissible as evidence). The petitioner himself has not made any effort to personally verify the allegations. Therefore, the court could not take note of the allegations, the judgement said.

Lastly, the court said that it was not the right forum for making the allegations. Explaining the nature of the charges, it said that some of them should rightly go before the special judge under the Cr.P.C., some others before the Lok Ayukt, and the question of disqualification from the House before the Election Commission.

103. STATE LIABILITY TO PAY DAMAGES

Nilabati Behera vs. State of Orissa

In some earlier cases like Rudul Sah (29) and Hongary (30), t Supreme Court had granted compensation for illegal detentions, custo deaths and other violations of the fundamental rights. But they were ma on *ex gratia*, or ad hoc basis. It was not given after laying down principle of law. In this case, the Supreme Court says that the state liable to pay compensation for such violations in writ petitions and t principle of sovereign immunity will not apply.

Facts: Nilabati Behera sent a letter to the Supreme Court seeki compensation for the death of her son, Suman, aged 22, in police custo The letter was treated as a writ petition.

The youth was taken from his home by a police officer to exami him in a case of theft. The next day, his body was found on the railw track nearby. The body carried multiple injuries. The mother alleg murder by the police. The police maintained that the youth was run ov by a train while escaping from their custody. The court, after appointing commission and going through evidence, came to the inescapable concl sion that the youth was done to death by the police. Since the guilt of t officers was proved, the court went into the question of compensation.

Ruling: The government had so far claimed sovereign immuni from claims of compensation for the acts of its servants. The Supren Court had also upheld the immunity in a famous case in 1965 (*Kasturil vs. State of U.P.).* The present judgement demolished that principle. T *Kasturilal* decision was distinguished from the present case. In that cas it was police officers misappropriating goods; the present case is about person's fundamental rights, the court said.

Since the judgement is significant, important parts are reproduce below:

"A claim in public law for compensation for contravention of huma rights and fundamental freedoms, the protection of which is guaranteed the Constitution, is an acknowledged remedy for enforcement and prote tion of such rights, and such a claim based on strict liability made b resorting to a constitutional remedy provided for the enforcement of fundamental right is distinct from, and in addition to, the remedy in pr

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103. Judges: J.S. Verma, N. Venkatachala and A.S. Anand.
Judgement delivered on March 24, 1993. Reported in 1993 (2) Scale 309.

vate law for damages for the tort resulting from the contravention of the fundamental right. The defence of sovereign immunity being inapplicable, and alien to the concept of guarantee of fundamental rights, there can be no question of such as defence being available in the constitutional remedy. It is this principle which justifies award of monetary compensation for contravention of fundamental rights guaranteed by the Constitution, when that is the only practicable mode of redress available for the contravention made by the state or its servants in the purported exercise of their powers, and enforcement of the fundamental right is claimed by resort to the remedy in public law under the Constitution by recourse to Articles 32 and 226 of the Constitution. This is what was indicated in *Rudul Sah* (29) and is the basis of the subsequent decisions in which compensation was awarded under Articles 32 and 226 of the Constitution, for contravention of fundamental rights.

"The court is not helpless and the wide powers given to this court by Article 32, which itself is a fundamental right, imposes a constitutional obligation on this court to forge such new tools, which may be necessary for doing complete justice and enforcing the fundamental rights guaranteed in the Constitution, which enable the award of monetary compensation in appropriate cases, where that is the only mode of redress available. The power available to this court under Article 142 is also an enabling provision in this behalf. The contrary view would not merely render the court powerless and the constitutional guarantee a mirage, but may, in certain situations, be an incentive to extinguish life, if for the extreme contravention the court is powerless to grant any relief against the state, except by punishment of the wrongdoer for the resulting offence, and recovery of damages under private law, by the ordinary process. If the guarantee that deprivation of life and personal liberty cannot be made except in accordance with law, is to be real, the enforcement of the right in case of every contravention must also be possible in the constitutional scheme, the mode of redress being that which is appropriate in the facts of each case.

"This remedy in public law has to be more readily available when invoked by the have-nots, who are not possessed of the wherewithal for enforcement of their rights in private law, even though its exercise is to be tempered by judicial restraint to avoid circumvention of private law remedies, where more appropriate.

"We may, however, observe that the award of compensation in this (writ) proceeding would be taken into account for adjustment, in the event

of any other proceeding taken by the petitioner for recovery of compens tion on the same ground, so that the amount to this extent is not recover by the petitioner twice over.

"We clarify that the award of this compensation, apart from t direction for adjustment of the amount as indicated, will not affect a other liability of the respondents or any other person flowing from t custodial death of petitioner's son Suman Behera. We also expect that t State of Orissa would take the necessary further action in this behalf, ascertain and fix the responsibility of the individuals responsible for t custodial death of Suman Behera, and also take all available appropria actions against each of them, including their prosecution for the offen committed."

104. COMPENSATION IN RAPE CASES

Rathinam vs. State of Gujarat

We have seen in Nilabati Behera vs. State of Orissa (103) how t principle of state liability was developed by the Supreme Court over t years. The compensation cases dealt with so far related to illegal dete tions and deaths in custody. The present case relates to compensation f rape. The court grants only 'interim compensation' of Rs. 50,000 to t tribal woman pending the disposal of the petition. However, the order significant as it could be the harbinger of a future trend.

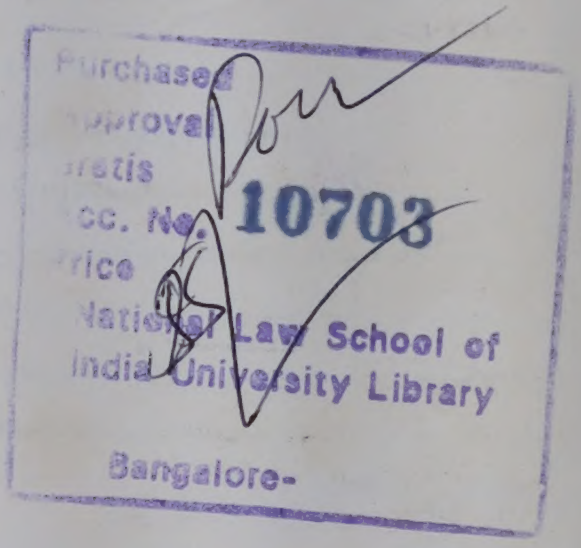
Facts: In one of those cases of police atrocities, Guntaben, a tribal woma was raped in police custody allegedly in the presence of her husband. social worker brought the case to the attention of the Supreme Cou through a regular criminal writ petition. The court appointed a commisi to find out the facts. It reported that the incident was true. It pointed o the officers who had been guilty of inaction or dereliction of duty. T court was told in 1986 by the Gujarat Government that action was bei taken against the guilty officers. But the government took several years take small steps and therefore the court gave a time frame within which a enquiries must be completed and criminal proceedings should be taken.

Ruling: While the first part of the order dealt with the action to be take against the police officers, the second part said: "A sum of Rs. 50,0 shall be paid as interim compensation by the State of Gujarat to the victi of the rape Smt. Guntaben, wife of Hanna Ramji. The said amount sha

104. Judges: B.P.J. Reddy and N. Venkatachala.
Order dated April 2, 1993. Reported in 1993 (2) Scale.

be deposited in the State Bank of India at Rajpipla, District Bharuch, within a period of six weeks from today. . . . The lady shall be free to utilise the said amount in such manner as she thinks fit."

The case was however not disposed of. The court has kept it in the live register to monitor the steps taken by the government. This is a rare case in which the Supreme Court followed up a complaint of rape for nearly a decade.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